

FEDERAL BUREAU OF INVESTIGATION
FOI/PA
DELETED PAGE INFORMATION SHEET
FOI/PA# 1334555-1

Total Deleted Page(s) = 156

Page 11 ~ Referral/Consult;

Page 12 ~ Referral/Consult;

Page 113 ~ b5;

Page 114 ~ b5;

Page 115 ~ b5;

Page 116 ~ b5;

Page 117 ~ b5;

Page 118 ~ b5;

Page 119 ~ b5;

Page 120 ~ b5;

Page 121 ~ b5;

Page 122 ~ b5;

Page 123 ~ b5;

Page 124 ~ b5;

Page 125 ~ b5;

Page 127 ~ b5;

Page 128 ~ b5;

Page 129 ~ b5;

Page 130 ~ b5;

Page 131 ~ b5;

Page 132 ~ b5;

Page 133 ~ b5;

Page 134 ~ b5;

Page 135 ~ b5;

Page 136 ~ b5;

Page 137 ~ b5;

Page 138 ~ b5;

Page 139 ~ b5;

Page 140 ~ b5;

Page 141 ~ b5;

Page 142 ~ b5;

Page 143 ~ b5;

Page 144 ~ b5;

Page 145 ~ b5;

Page 146 ~ b5;

Page 147 ~ b5;

Page 148 ~ b5;

Page 149 ~ b5;

Page 150 ~ b5;

Page 151 ~ b5;

Page 152 ~ b5;

Page 153 ~ b5;

Page 154 ~ b5;

Page 155 ~ b5;

Page 159 ~ b5;

Page 160 ~ b5;

Page 177 ~ Referral/Consult;

Page 178 ~ Referral/Consult;

Page 233 ~ b6; b7C;
Page 234 ~ b6; b7C;
Page 235 ~ b6; b7C; b7E;
Page 242 ~ Duplicate;
Page 243 ~ Duplicate;
Page 244 ~ Duplicate;
Page 248 ~ b6; b7C;
Page 249 ~ b6; b7C;
Page 250 ~ Referral/Direct;
Page 251 ~ Referral/Direct;
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Page 254 ~ Referral/Direct;
Page 255 ~ Referral/Direct;
Page 256 ~ Referral/Direct;
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72-274-43

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

THE UNITED STATES OF AMERICA	)	U.S. Mag. No. 83-0582M
	)	
v.	)	Violations: 18 U.S. Code §1507
	)	40 U.S. Code §13(j)
LARRY FLYNT	)	(Interfering, obstructing, or
	)	impeding the administration of
	)	Justice; uttering loud threaten-
	)	ing and abusive language in the
	)	Supreme Court Building)

I N F O R M A T I O N

The United States Attorney charges:

COUNT I

On or about November 8, 1983, within the District of Columbia, the defendant LARRY FLYNT, with the intent of interfering with, obstructing and impeding the administration of justice, did unlawfully demonstrate in a building housing a court of the United States, that is, the Supreme Court of the United States.

(Violation of Title 18 U.S. Code, §1507)

COUNT II

On or about November 8, 1983, within the District of Columbia, the defendant LARRY FLYNT did unlawfully utter loud, threatening and abusive language in the Supreme Court building.

(Violation of Title 40 U.S. Code, §13(j))

Joseph E. De Genova
JOSEPH E. DIGENOVA
United States Attorney *TJR*

Executive
United States Attorney

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FBI

TRANSMIT VIA:

☒ Teletype
☐ Facsimile
☐ _____

PRECEDENCE:

☒ Immediate
☐ Priority
☐ Routine

CLASSIFICATION:

☐ TOP SECRET
☐ SECRET
☐ CONFIDENTIAL
☐ UNCLAS E F T O
☒ UNCLAS 11/14/83
Date _____

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0045

FM WASHINGTON FIELD (72-NEW) (P) (SOD C-7)

TO DIRECTOR, FBI IMMEDIATE *1035*(ATTN SUPERVISOR)

PUBLIC CORRUPTION UNIT,

WHITE COLLAR CRIME SECTION, CID)

BT

UNCLAS

LARRY FLYNT; INTERFERENCE WITH SUPREME COURT OF THE UNITED STATES;
 OBSTRUCTION OF JUSTICE; (OO:WFO).

ON NOVEMBER 10, 1983, THE U.S. ATTORNEY'S OFFICE (USAO),
 WASHINGTON, D.C., REQUESTED THE ASSISTANCE OF THE WASHINGTON
 FIELD OFFICE (WFO), FEDERAL BUREAU OF INVESTIGATION (FBI),
 IN CONDUCTING AN INVESTIGATION CONCERNING CAPTIONED SUBJECT.
 THIS MATTER WAS REFERRED TO THE USAO BY THE SUPREME COURT OF
 THE UNITED STATES UPON THE ARREST OF LARRY FLYNT BY U.S.
 SUPREME COURT POLICE ON NOVEMBER 8, 1983.

THE ARREST OF FLYNT IMMEDIATELY FOLLOWED HIS OUTBURST OF
 OBSCENE LANGUAGE UPON THE COURT DURING PROCEEDINGS ON NOVEMBER 8,
 1983. HE WAS IMMEDIATELY REMOVED FROM THE COURT, TAKEN INTO

① WFO *lmy*

(1)

11-15-83
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m.p.

Approved: *202 201*Transmitted *1035*

(Number)

(Time)

Per: *RD*

C. H. G.

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FBI

TRANSMIT VIA:

☐ Teletype
☐ Facsimile
☐ _____

PRECEDENCE:

☒ Immediate
☐ Priority
☐ Routine

CLASSIFICATION:

☐ TOP SECRET
☐ SECRET
☐ CONFIDENTIAL
☐ UNCLAS E F T O
☒ UNCLAS

Date 11/14/83

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CUSTODY, AND EVENTUALLY TRANSPORTED TO THE CENTRAL CELLBLOCK OF THE METROPOLITAN POLICE DEPARTMENT. FLYNT WAS TAKEN BEFORE MAGISTRATE JEAN F. DWYER SUBSEQUENT TO ASSISTANT U.S. ATTORNEY (AUSA) [REDACTED] FILING A CRIMINAL INFORMATION CHARGING VIOLATION OF TITLE 18, SECTION 1507 (INTERFERING, OBSTRUCTING, OR IMPEDING THE ADMINISTRATION OF JUSTICE).

FLYNT WAS RELEASED ON PERSONAL RECOGNIZANCE. A HEARING WAS SET FOR NOVEMBER 21, 1983.

IT IS ANTICIPATED THAT INASMUCH AS THE STATEMENTS MADE BY FLYNT WERE RECORDED BY THE COURT AS A NORMAL PROCEDURE, THE INVESTIGATION WILL FOCUS ON INTERVIEWS OF WITNESSES EXCLUDING JUSTICES OF THE COURT.

THE BUREAU WILL BE KEPT ADVISED OF SIGNIFICANT DEVELOPMENTS.

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Approved: _____ Transmitted _____ Per _____
(Number) (Time)

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SEARCHED	INDEXED
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[Signature]	

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Office of the Marshal
Supreme Court of the United States
Washington, D. C. 20543

November 8, 1983

MEMORANDUM

SUBJECT: 82-485 Keeton v. Hustler Magazine, Inc.
Larry Flynt

On November 7, 1983 [redacted] Clerk of the Court, advised that arguing attorney [redacted] in 82-485 Keeton v. Hustler Magazine Inc. withdrew from the case which was to be argued on the following day; that [redacted] was appointed as amicus curiae in support of the judgment below. [redacted] requested that [redacted] be called with reference to courtroom seating for Larry Flynt, owner of Hustler Magazine, who was a wheelchair handicapped person. [redacted] further advised that the original request for Flynt to sit at counsel table was denied.

[redacted] was then called at [redacted] at which time he inquired as to seating for Larry Flynt. He further advised that Flynt traveled with a number of bodyguards. [redacted] was advised that we could seat Flynt but not his bodyguards and further, that anyone with a weapon in the building would be subject to arrest. We consented to one person to assist Flynt in the propulsion of his wheelchair, and that each would be searched by the metal detector prior to entering the Courtroom.

On November 8, 1983 at about 10 AM Flynt, with an entourage of about six bodyguards appeared near the Marshal's Office at which time, Flynt was personally searched for weapons in a private area and his aid through the metal detector. Accompanied by Officer [redacted] and Lt. [redacted] they entered the Courtroom shortly after 10 AM. Our officers were previously instructed as to appropriate action to take in the event of any outburst by Flynt. His other bodyguards remained outside the Courtroom. Flynt came out of the Courtroom twice, once to confer with an attorney by the name of Isaacman and the second time about 10:50 AM ostensibly to get a drink of water which was furnished. He re-entered the Courtroom and shortly thereafter when the case was

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submitted, Flynt began a profane outburst, many parts of which were obtained on the Courtroom tape recorder.

Flynt was immediately removed from the Courtroom and arrested. [redacted] was called and he conferred with the U.S. Attorney's Office which authorized prosecution. Flynt was taken to Capitol Hill Hospital as he complained that he required special bathroom facilities. From there he was taken to U.S. District Court, processed and turned over to the custody of the U.S. Marshal's Service.

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Lt [redacted] and Captain [redacted] then went to the office of AUSA [redacted] where the complaint would be drawn. At this time it is believed that Flynt would be charged under 18 USC 1507 - Attempting to Influence Justice.



Marshal of the Court

72-274-3

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SERIALIZED *my* FILED *my*

NOV 15 1983

FBI WASH FIELD OFFICE

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

THE UNITED STATES OF AMERICA : U.S. Mag. No.
v. : Violation: 18 U.S. Code § 1507
LARRY FLYNT : (Interfering, obstructing, or
impeding the administration of
Justice)

I N F O R M A T I O N _

The United States Attorney charges:

On or about November 8, 1983, within the District of Columbia,
LARRY FLYNT with the intent of interferring with, obstructing and
impeding the administration of justice, did unlawfully demonstrate
in a building housing a court of the United States, that is, the
Supreme Court of the United States.

(Violation of Title 18 U.S. Code, Section 1507)

Attorney of the United States in
and for the District of Columbia

by:

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This will acknowledge receipt of the following
items from [redacted] Marshal of the Supreme Court:

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Official Transcript Proceedings Before
Supreme Court of the United States
Case No. 82-485

[redacted] Petitioner v Hustler Magazine, Inc.
November 8, 1983

Two Tapes:

82-485 [redacted] v Hustler Mag

Re: Larry Flynt remarks

(1) at Normal Speed

(1) at Speed: #6 Sony Transcriber

Listing of Larry Flynt Correspondence

Statements by following Police Officers:

Captain [redacted]

Lt. [redacted]

Pfc [redacted]

Lt. [redacted]

Metropolitan Police Department's Report

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[redacted] FBI
Agent [redacted]
Date: 11/21/83

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72-2745

November 17, 1983

Listing of Larry Flynt Correspondence

September 14, 1983 - Date of letter signed by Larry Flynt adding Justice O'Connor to HUSTLER'S complimentary subscription list (issue of HUSTLER enclosed with letter).

September 19, 1983 - Date of letter from Justice O'Connor's secretary requesting that the Justice's name be removed from HUSTLER'S complimentary subscription list.

September 30, 1983 - Date of postmark on envelope received from Larry Flynt Publications, 2029 Century Park East, Suite 3800, Los Angeles, CA 90067, on October 3, 1983, containing a letter signed by Marsha Rider for Larry Flynt enclosing "Special Report Number One" of L.A. FREE PRESS. "I have taken the liberty of adding your name to the Free Press' complimentary subscription list."

October 4, 1983 - Date of letter from Justice O'Connor's secretary requesting that the Justice's name be removed from the Free Press' complimentary subscription list.

October 4, 1983 - Date of postmark on envelope received from 502 Cannon HOB, Washington, D.C. 20515, enclosing envelope, postmarked September 29, 1983, addressed to Rep Mel Levine, 502 Cannon House Ofc, D/Calif, Washington, DC, 20515. Inside this envelope was a letter, dated September 29, 1983, addressed to Justice O'Connor from Larry Flynt (signed by [redacted] for him), HUSTLER, 2029 Century Park E., Los Angeles, CA. 90067, which begins: "[blacked out] I'll take you off HUSTLER's subscription list when you resign from the Court."

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October 4, 1983 - Date of second postmark (first postmark dated September 29, 1983) on envelope from HUSTLER, 2029 Century Park E., Los Angeles, CA. 90067. Inside this envelope was an identical letter to above with no blacking out - "F--- you, c---. I'll take you ..."

October 11, 1983 - Photocopy of letter to Larry Flynt from [redacted] [redacted] dated September 28, 1983, received at Supreme Court, in an envelope, postmarked October 6, 1983, from Larry Flynt Publications, 2029 Century Park East, Suite 3800, Los Angeles, California 90067. [redacted] last sentence reads: "You can forward the remainder of Strom's subscription to someone who will appreciate it!")

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October 24, 1983 - Federal Express Overnight Envelope received containing two video cassettes entitled "Larry Flynt and The First Amendment".

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October 24, 1983 - Envelope, postmarked October 20, 1983, received from LF.P. INC., 2029 CENTURY PARK EAST, STE. 3800, LOS ANGELES, CALIFORNIA 90067. Enclosed was December 1983 issue of HUSTLER Magazine.

November 7, 1983 - Part Two of a lengthy telegram signed Larry Flynt received. Part One of the telegram was sent to Justice O'Connor from the Communications of the Justice Department.

November 10, 1983 - Envelope delivered by commercial messenger from Larry Flynt Publications received. Enclosed were three advertisements (Larry Flynt on State/Church Separation; Larry Flynt on Life, Liberty, and Justice for All; Larry Flynt on Freedom of Expression) that various newspapers "refuse[d] to print."

November 15, 1983 - Envelope delivered by commercial messenger containing letter, dated November 11, 1983, signed by Larry Flynt, enclosing a press release and premier issue of THE REBEL. "I have taken the liberty of placing your name on the complimentary mailing list of THE REBEL, a newsweekly with a cause."

Public Information Office
Supreme Court of the United States
Washington, D. C. 20543

November 14, 1983

TO : File Memo

FROM : Lieutenant [redacted] [signature]

SUBJECT: Arrest of Larry Flynt, Tuesday, November 8, 1983

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On Tuesday, November 8, 1983 at 0830 to 1700 hours I was on duty as a Police Officer employed by the Supreme Court of the U.S. My assignment was to be with Mr. Larry Flynt when he visited the Court to listen to his case being argued before the Supreme Court of the United States.

I met Mr. Larry Flynt as he exited elevator #4 prior to entering the courtroom. I explained to Mr. Flynt that there was a reserved seating area for him and one attendant. I also explained that he would not be permitted to bring a tape recorder into the courtroom. After a brief discussion on this issue and after the completion of a physical search of Mr. Flynt, one attendant and his clergy person Mr. Flynt was escorted to his reserved seating area without the recording equipment.

I remained in the courtroom with Mr. Flynt for the duration of his visit. Mr. Flynt requested to leave the courtroom on two occasions. Once to speak to his attorney and once for a drink of water.

At approximately 1103 hours the case ended. At this time Mr. Flynt shouted "FUCK THIS COURT." Simultaneously he unbuttoned his sports jacket. I was standing directly to Mr. Flynt's left side when he started shouting. As he started to unbutton his sports coat I stepped in front of him to block his view to the Justices. I placed my left hand in position of his hands touching both hands in such a manner so he could not put an object in his hands. I also moved my right hand and my upper body in front of his face in an attempt to distract his train of thought. This activity lasted for a few seconds as P.F.C. Sokoloski had now arrived at my location and was turning Mr. Flynt's wheelchair around 180 degrees so that his back was to the Justices. P.F.C. [redacted] wheeled Mr. Flynt out of the courtroom a distance of approximately 10 walking steps. Mr. Flynt during this time was shouting obscenities, I did not pay attention to each word as I was closely paying attention to Mr. Flynt's hands. Mr. Flynt stopped shouting as we walked behind the curtains in the rear of the courtroom entering the exit door of the courtroom.

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As Mr. Flynt was being wheeled out of the courtroom in the hall area, [redacted] Marshal of the Supreme Court of the U.S. advised me that Mr. Flynt was to be arrested and taken to the lawyers lounge. Mr. Flynt, one attendant, his attorney, his clergy person, [redacted] and myself went to the lawyers lounge located directly across the hall from the Marshal's office. After which one of Mr. Flynt's attorneys advised that Mr. Flynt needed to use a handicapped rest room and that a personal need had arisen.

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Upon learning that none of the rest rooms would accommodate Mr. Flynt I decided to transport Mr. Flynt to the Capitol Hill hospital emergency room to use their handicapped restroom facility. I also attempted to transport Mr. Flynt in his wheelchair in a Capitol Hill Police Van. While attempting to load Mr. Flynt into the wagon we saw that he would be in an unsafe position so I tried to use a Court automobile, however, these vehicles would not accommodate Mr. Flynt.

Mr. Flynt's attorney offered the use of the rented Limo used by Mr. Flynt for the purpose of transport.

[redacted] (Marshal of the Court), Capt. [redacted] and myself agreed and we put Mr. Flynt in the rented Limo (a 4 door Cadillac, dark blue) and transported him to Capitol Hill hospital, 7th & "C" Street, N.E., Washington, D.C. to use the rest room.

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While I was enroute to the hospital in a Court vehicle following Mr. Flynt, I received a radio message from my police dispatcher to telephone [redacted] when I reached my destination.

When I telephoned [redacted] he advised me to take Mr. Flynt to the Central Cellblock in the Metropolitan Police Department and contact [redacted] A.U.S.A., Room 3836, Telephone: 633-3435. Also that the exact charge for the arrest would be "Criminal Contempt Section 401, title 18, USC."

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After Mr. Flynt completed using the rest room he was transported to the Central Cellblock. At this location he was finger printed and photographed. It was at this time that I learned that Mr. Hume was not in the same building and that in order for me to bring Mr. Flynt to [redacted] it would required another transport.

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Mr. Flynt was transported to the U.S. Courthouse 3rd and C Street, N.W., Washington, D.C. entrance. Upon arrival at the Courthouse I was met by a U.S. Deputy Marshal who took custody of Mr. Flynt. I never saw Mr. Flynt again that day.

A few minutes later I met [redacted] in his office. Mr. Hume turned the case over to [redacted] A.U.S.A. for prosecution. I remained in [redacted] office until the arraignment was over. As I was leaving the Courthouse I met [redacted] in the hall near the courtroom used for arraignment, said goodbye and left.

November 14, 1983

RECEIVED
SUPREME COURT, U.S.
MARSHAL'S OFFICE

TO : File Memo

FROM : Captain [redacted]

'83 NOV 21 P3:51

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SUBJECT: Arrest of Larry Flynt, Tuesday, November 8, 1983

Mr. Larry Flynt was taken from the Lawyers Lounge to the basement via number 4 elevator. At our request for transportation the U.S. Capitol Police supplied the usual "Paddy Wagon" a van type vehicle commonly used by various Police Departments to transport prisoners. Mr. Flynt was lifted into the vehicle and once inside it was found the vehicle could not accommodate him and his wheelchair, a check with the Court Stationwagon and Court Lincoln was made and found they were not able to accommodate him. (Mr. Flynt must be transferred via a wooden board, he cannot be carried, the doors do not open sufficient to allow the transfer). It was decided at this time by [redacted] Lt. [redacted] and Capt. [redacted] to transport Mr. Flynt in his own rented Cadalic Limo. Mr. Flynt, Captain [redacted], one attendant P.F.C. [redacted] and a Minister were transported in a caravan consisting of the U.S. Capitol Police vehicle, the Limo, the Court Lincoln with Lt. [redacted] P.F.C. [redacted] and P.F.C. [redacted] and Lt. [redacted]. The Caravan departed for the "Capitol Hill Hospital Emergency Entrance" Mr. Flynt was escorted by Captain [redacted] P.F.C. [redacted] and [redacted] to an examination room, a portable toilet was used, he was then escorted back to the limo and the caravan departed for the Central Cellblock per Lt. [redacted] who received directions from (I understand) Marshal [redacted]. Upon arrival at the Cellblock Mr. Flynt was printed and photographed by the Metropolitan Police. A call was placed to [redacted] A.U.S.A. who requested we transfer Mr. Flynt to the U.S. Courthouse 3rd and Constitution Ave., N.W. Mr. Flynt was taken from the Cellblock to the rear entrance of the Courthouse where we were met by U.S. Marshals who directed that Mr. Flynt remain in the vehicle and they placed the vehicle on an elevator, the elevator took us to the basement area where Mr. Flynt was removed and escorted to their Cellblock, he was placed in the first cell in the front of the cellblock, we were assured by the Marshal [redacted] that he would be watched on T.V. and if needed he has a nurse on standby.

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Upon arrival in [redacted] office to assist with the charges [redacted] assigned this case to A.U.S.A. [redacted] who presented the case for arraignment to Jean Dwyer Magistrate. While we were in the U.S.A. Office we looked out of the window and saw the line of cars belonging to Mr. Flynt lined up on the South side of C Street, N.W. heading toward 3rd Street. At the entrance to the 3rd and C parking entrance to the Courthouse there were about 15 news photographers apparently waiting for Mr. Flynt to exit. Mr. Flynt was arraigned in Mag. Dwyer's chambers and released on his own recognizance.

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Supreme Court of the United States
Washington, D. C. 20543

November 14, 1983

TO: Captain [REDACTED]
THRU: Lieutenant [REDACTED]
Lieutenant [REDACTED]
FROM: P.F.C. Stephen R. Sokoloski
SUBJECT: Arrest of Larry Flynt on November 8, 1983

I, Officer [REDACTED] while on duty, Tuesday, November 8, 1983 at the Court Door entrance, I was instructed by Lieutenant [REDACTED] to observe Mr. Larry Flynt while he was in the Courtroom. I was standing in rear of the Courtroom behind the curtains to observe Mr. Flynt in the event he caused a disturbance while in the Courtroom. When Mr. Flynt did start shouting, I quickly wheeled him out of the Courtroom and stayed with him all the time until I released him to the U.S. Marshals at the lockup. I was the arresting officer.

[REDACTED]
P.F.C.
Supreme Court, US Police

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Supreme Court of the United States
Washington, D. C. 20543

November 10, 1983

TO: Captain [redacted]
THRU: Lieutenant [redacted]
FROM: Lieutenant [redacted]
SUBJECT: Arrest of Larry Flynt on Tuesday, November 8, 1983

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At about 9:58 AM Tuesday, November 8, 1983 Mr. Larry Flynt, a paraplegic, entered the building via the South Drive for the purpose of hearing the argument in case No. 82-485, [redacted] v. Hustler Magazine.

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Arrangement had been made with the Marshal's Office for reserved seating for Mr. Flynt. Prior to entering the Court room Mr. Flynt was advised by Lieutenant [redacted] he would not be able to take a cassette player/recorder and a box containing several cassettes into the hearings. He indicated that he intended not only to take the recorder and cassettes in the courtroom, but also to play them to the Court. He was advised again he would not be permitted to enter the Courtroom with the cassette equipment.

He then indicated he wanted the tapes given to [redacted] Respondent in the Hustler case. The tapes and player was given to [redacted] Mr. Flynt [redacted] Mr. Flynt was then permitted to enter the courtroom after completion of normal security procedures. [redacted] delivered the tapes to [redacted] Chief Deputy Clerk, for delivery to [redacted]

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On completion of [redacted] v. Hustler Magazine, Mr. Flynt from his wheelchair shouted obscenities which were direct to the Court. He was removed from the Courtroom by Lieutenant [redacted] and P.F.C. [redacted] during which time he continued a stream of obscenities. He was then taken to Room 111, Lawyers Lounge, to await transportation to District Court and arraignment.

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Prior to the arrival of the U.S. Capitol Police transfer wagon, Mr. Flynt said he needed to use the men's room. The Court not having restroom facilities for the handicapped, and taking into

consideration Mr. Flynt's physical disabilities, Lieutenant Borruso decided to transport him to the Capitol Hill Hospital and then to the District Court Central Lockup for processing, using Mr. Flynt's rental limousine. Mr. Flynt's attorney agreed and he and two of Mr. Flynt's attendants were permitted to accompany him.

On completion of booking procedures at the Central Lockup about 1:30 PM Mr. Flynt was transported to the D.C. District Court and turned over to Federal Marshals.

The U.S. Capitol Police. Officers [redacted] badge [redacted] and [redacted] provided escort from the Supreme Court to the D.C. District Court.

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[redacted]
Lieutenant
Supreme Court US Police

METROPOLITAN POLICE DEPARTMENT
Washington, D. C.

PROSECUTION REPORT

P.D. 163 Rev. 3/82-27-77 G.O. 401.5

5. UNIT-ARREST NO. POLICE CHARGE(S)

➤ SEC 401 CRIMINAL
TITLE 18 Contempt
US CODE

ID-11661

1. PERSON NOTIFIED OF NAME CHANGE-UNIT-DATE/TIME-NCIC NO. (ID Only)		2. COMPLAINT NUMBER ➤ 526393	
3. DEFENDANT'S TRUE NAME-LAST, FIRST, MIDDLE (ID Only) FLINT, LARRY		4. ID NUMBER (ID Only) ➤ 364926	
6. DEFENDANT'S NAME-LAST, FIRST, MIDDLE (At time of arrest) FLINT, LARRY		7. CID NUMBER	
8. NICKNAME/ALIAS NONE		9. DEA LAB NUMBER	
10. ADDRESS (Include Room/Apt No.-City & State if Outside D.C.) ➤ 364 ST Cloud Belaire, Calif 90024		11. PHONE NUMBER 213-471-3441	
12. SEX ➤ M	13. RACE ➤ W	14. BIRTHDATE ➤ 11/1/42	15. TIME IN D.C. 1 DAY
16. SOCIAL SECURITY NUMBER 407-52-6390			
17. TYPE OF RELEASE ☐ CITATION ☐ BOND ☐ COLLATERAL	18. COURT DATE	19. HAT N/A	20. COAT white
21. JACKET white	22. PANTS BLK	23. SHIRT T-shirt	24. BIRTHPLACE (City & State) Kentucky

17. TYPE OF RELEASE
☐ CITATION ☐ BOND
☐ COLLATERAL

18. COURT DATE

19. HAT
N/A

20. COAT
white

21. JACKET
white

22. PANTS
BLK

23. SHIRT
T-shirt

24. BIRTHPLACE (City & State)
Kentucky

25. CO-DEFENDANTS: Number (If more than 4, list Name, Address, Zip Code & Phone Numbers in Statement of Facts Section.)

NAME, ADDRESS, ZIP CODE AND PHONE NUMBER	NAME, ADDRESS, ZIP CODE AND PHONE NUMBER
1.	2.
3.	4.

26. WALES/NCIC CHECK

CHECK MADE BY (Name) CPT. INCIC NUMBER WARRANT ON FILE (If Yes, enter Warrant Number(s.)
☐ YES ☒ NO

27. LOCATION OF OFFENSE (Exact Address, include Room/Apt No.) ➤ #1st ST NE DC MAIN Court Room	DATE OF OFFENSE ➤ 11/8/83	TIME OF OFFENSE ➤ 1100 AM
28. LOCATION OF ARREST (Exact Address, include Room/Apt No.)	DATE OF ARREST	TIME OF ARREST
29. ARRESTING OFFICER'S NAME, RANK, BADGE NO. & UNIT OR AGENCY	30. ASSISTING OFFICER'S NAME, RANK, BADGE NO. & UNIT OR AGENCY	

31. DEFENDANT ADVISED OF RIGHTS

DATE 11/8/83	TIME 1230	LOCATION CCB	OFFICER'S NAME ADVISING/COMPLETING PD FORM 47	BADGE NO.	UNIT
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32. COMPLAINANTS/WITNESSES (If sworn member-Name, Rank, Badge No. and Unit.)

NAME-LAST, FIRST, M.I.	ADDRESS-STREET CITY STATE ZIP CODE	BIRTHDATE	ONE NO.
W-1			
W-2			
W-3			
W-4			
W-5			
W-6			

33. PROPERTY RECOVERED/ITEMS OF EVIDENCE

DESCRIPTION	BY WHAT MEANS-LOCATION-TIME	FROM WHOM	BY WHOM	PROPERTY BOOK/PAGE NO.	CSSES NO.
1.		IDENTIFICATION & RECORDS DIV	PER		
2.		DATE	TIME		
3.		CCB			
4.		DGS			

34. RECORD CLERK'S NAME	35. INITIALS-DATE-UNIT OF PERSON TAKING PRINT (Original Copy ONLY.)	36. ARREST RECORD SUMMARY 1. NONE 2. 3. 4. 5. 6.	37. M.O. (Weapons/instruments used, Hangouts, Habits, or any unusual Characteristics of Defendant -Scars/Tattoes, etc.)	38. RIGHT THUMB PRINT
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DISTRIBUTION: Page 1. to I & RD; Page 2. & 3. to Prosecutor; Page 4. Officer's Copy; Page 5. (yellow) Unit Copy.

REVERSE CARBON AND FILL IN REVERSE SIDE OF THIS FORM

-40. NAMES OF LIVING FAMILY, RELATIVES, FRIENDS AND ASSOCIATES *(Begin with immediate Family.)*

44. STATEMENT OF FACTS: (Give a brief statement, in your own words, of the facts surrounding the offense and the arrest. Use Continuation Form PD 202A for additional space. Note present condition of any injured person(s). Do not give Witnesses' Names or Addresses, REFER to them as W-1 or W-2, etc. as indicated in Item 31.)

IDENTIFICATION
PROCESSED THIRD

MURDER OF MARTIN LUTHER KING, JR.
APRIL 4, 1968, MEMPHIS, TENNESSEE

FBI - MEMPHIS

SEARCHED INDEXED
SERIALIZED FILED

APR 10 1968

U.S. DEPARTMENT OF JUSTICE

45. DEFENDANT'S VERSION/REMARKS: [What did defendant say about the offense or his/her whereabouts at the time of offense?
(Use PD 118 for defendant's written statement.)]

46. BAIL REFORM ACT CASES: Was a statement made by defendant in reference to his/her failure to appear? ☐ Yes ☒ No *W. H.*
(If yes, include in Defendant's Version/Remarks Section above.)

[REDACTED]

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FEDERAL BUREAU OF INVESTIGATION

1

Date of transcription 11/17/83

[redacted] Public Information Officer, U. S. Supreme Court, Washington, D.C. (WDC), telephone [redacted] was interviewed in her office by [redacted] who identified himself as a Special Agent (SA) of the Federal Bureau of Investigation (FBI):

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After being advised of the nature and the purpose of the interview, [redacted] voluntarily provided the following information:

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She has held her position since July 12, 1982. Prior to her appointment, she was a reporter for the Washington Star.

On November 8, 1983, she was covering proceedings of the Supreme Court as part of her responsibilities. Her role is to disseminate to the press and public proceedings of the Court.

She had previously been made aware that LARRY FLYNT, whose case was going to be argued before the Court that morning, would be attending. She knew that FLYNT had sent subscriptions to HUSTLER MAGAZINE, as well as other items, to members of the Court and was therefore sure to attract interest as he appeared to hear the session of the Court.

She recalls that she was seated in the Courtroom as FLYNT was brought in prior to his case being argued. He appeared slightly agitated and motioned to speak to Lt. BORRUSO a few times. She believes that FLYNT left the room on at least two occasions during the arguments before the Court. She recalls that FLYNT had what appeared to be a Bible with him. She also noticed that he used an eyedropper to put something into his eye during the proceedings.

Just shortly after 11:00 p.m., the Chief Justice announced, following the presentation of the arguments then before the Court, that the case was submitted and

Investigation on 11/15/83 at Washington, D.C. File # Washington Field 72-274 - 6
by SA [redacted] JFC:sgt Date dictated 11/17/83

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Continuation of interview of [REDACTED]

-2-
Pageb6
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asked the Clerk to call the next case, CALDER v. JONES & ENGELS. It was at this point that FLYNT began shouting, apparently directing his words to the front of the Courtroom. She recalls that his first words were: "Fuck this Court." She also heard him say several other words which included: "You have denied me the counsel of my choice" and "You Motherfuckers." She is certain several other words were shouted by FLYNT but she cannot precisely recall them. She recalls that there was a rustle in the Courtroom. She did not hear anything said by the Chief Justice or anyone on the bench inasmuch as she followed FLYNT as he was removed from the room. She noticed that just prior to FLYNT being taken out, Lt. [REDACTED] was in front of FLYNT and that FLYNT's bowtie was slightly askew. She did not see anything printed on FLYNT's shirt.

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After being taken out of the Courtroom, she recalls that FLYNT and those accompanying him were very cooperative. She knows that FLYNT was taken to the lawyers lounge but she did not accompany the group there.

FEDERAL BUREAU OF INVESTIGATION

Date of transcription 11/17/83

1

[redacted] Assistant Marshal of the Court, U.S. Supreme Court, Washington, D.C., telephone [redacted] was interviewed at the U.S. Supreme Court Building, Washington, D.C., by [redacted] who identified himself as a Special Agent (SA) of the FEDERAL BUREAU OF INVESTIGATION (FBI).

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After being advised of the nature and purpose of the interview, [redacted] voluntarily provided the following information:

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During arguments before the Supreme Court of 82-485 KEETON v. HUSTLER MAGAZINE, INC., LARRY FLYNT, on the morning of November 8, 1983, he was sitting at the Court Crier or Marshal's Desk in the Courtroom.

Sometime between 10:28 and 10:58 a.m., FLYNT left the Courtroom. [redacted] believes that FLYNT, while outside the Courtroom, wrote a note because a short time after FLYNT left, a messenger from the Clerk's Office delivered a folded piece of paper to [redacted] for delivery to FLYNT's counsel [redacted] who was presently before the Court. [redacted] believes the name of [redacted] appeared on the outside of the folded paper and therefore, he assumed it was directed to [redacted]

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Inasmuch as he is not permitted to deliver anything to one presently before the Court, he sent the paper to the appropriate counsel table by messenger. He is certain that the note was given to a gentleman at the table and, after being read, the note was returned to [redacted] via messenger who told him that the note was for [redacted]. [redacted] read the note which, he believes, was originated by FLYNT. His recollection is that the note said something to the effect that [redacted] was not the counsel of FLYNT's choice and therefore, FLYNT's rights were being violated.

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[redacted] declined to send the note to [redacted] who was still arguing before the Court, but instead sent the

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Investigation on 11/15/83 at Washington, D.C. File # Washington Field 72-274-7
by SA [redacted] sg [redacted] Date dictated 11/16/83

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Continuation of interview of _____

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note to Chief Justice BURGER via messenger. _____ believes that the Chief Justice got the note at approximately 10:45 and believes that the Chief Justice read the note. He did not notice the response by the Chief Justice nor does he recall the disposition of the note. _____ stated that it is normal procedure that notes between members of the Court are destroyed as a matter of routine.

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At approximately 11:03, or shortly thereafter, LARRY FLYNT made a verbal outburst just shortly after the Chief Justice stated that the case had been accepted. _____ stated that he cannot recall the precise words shouted by FLYNT but knows that they included obscenities. He knows that he heard FLYNT say the words: "You've deprived me of my rights---motherfuckers---assholes". He is certain that FLYNT shouted several other words as he was being escorted out of the Courtroom. _____ is absolutely certain that members of the Court heard the words shouted by FLYNT. He noted that the accoustics in the Courtroom are very good and that FLYNT was shouting.

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Following the shouting by FLYNT, the Chief Justice turned to _____ and said: "Marshal have that man arrested". _____ responded by saying: "I will see that it's done".

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_____ recalls that he then picked up the telephone and called the police room and advised an officer that the Chief Justice wanted LARRY FLYNT arrested. Later, a note came to _____ from the Chief Justice which stated that the Chief Justice wanted FLYNT held for contempt and photographed and fingerprinted prior to release. _____ recalls that he again telephoned the police room and informed them of the request made by the Chief Justice.

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_____ is not certain of the events following the foregoing inasmuch as he went on to his duties in the Courtroom. He believes that thereafter communications from the Chief Justice were addressed to the Marshal of the Court.

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FEDERAL BUREAU OF INVESTIGATION

Date of transcription 11/17/831

[] Marshal of the Court, U.S. Supreme Court, Washington, D.C., telephone 252-3200, accompanied [] who identified himself as a Special Agent (SA) of the FEDERAL BUREAU OF INVESTIGATION (FBI), to the Courtroom of the Supreme Court and the following took place:

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Using a 100 foot measuring tape, SA [] and Marshal [] measured the distance from the last row, center of the Courtroom, to the lecturn at the front of the Courtroom and determined that the distance was approximately 37 feet. The distance from the lecturn to the location of the center chair of the Supreme Court bench was measured to be approximately 10 additional feet.

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Marshal [] therefore, determined that the distance from where LARRY FLYNT was sitting in the Courtroom on November 8, 1983, to the location of the Chief Justice of the Court, to be approximately 47 feet.

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Investigation on 11/15/83 at Washington, D.C. Washington Field File # 72-274 -8
by SA [] sg Date dictated 11/16/83

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FEDERAL BUREAU OF INVESTIGATION

Date of transcription 11/17/83

1

[redacted] Captain, U.S. Supreme Court Police, Washington, D.C., telephone [redacted] was interviewed in his office by [redacted] who identified himself as a Special Agent (SA) of the FEDERAL BUREAU OF INVESTIGATION (FBI).

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After being advised of the nature and purpose of the interview, [redacted] voluntarily provided the following information:

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On the morning of November 8, 1983, he met LARRY FLYNT as he was taken from the elevator for seating in the Courtroom. He recalls that FLYNT had a tape recorder with him and he was informed by [redacted] and Lieutenant [redacted] U.S. Supreme Court Police, that FLYNT would not be allowed in the Courtroom with the recorder. The recorder was eventually given to an attorney representing FLYNT.

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Prior to being allowed in the Courtroom, FLYNT was taken to a blocked off corridor in the building and, along with his attendant and minister, the three of them were frisked by police officers with the aid of a portable metal detector. At different times, either the minister or the attendant sat with FLYNT while in the Courtroom.

During the proceedings, he recalls that FLYNT left the Courtroom on perhaps two occasions. One occasion was to get a drink of water. He noted that just prior to the close of the presentation of FLYNT's case before the court, FLYNT's minister got up and left the Courtroom. [redacted] then went over to where FLYNT was sitting in the Courtroom.

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Just following the conclusion of the presentation of the case before the Court, at approximately 11:00 a.m., FLYNT started shouting at the Justices of the Court. [redacted] heard FLYNT shout: "fuck the court" followed by several other obscenities the exact words [redacted] cannot recall because he directed his attention to getting FLYNT out

Investigation on 11/14/83 at Washington, D.C. File # Washington Field 72-274-9
by SA [redacted] sg Date dictated 11/16/83

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Continuation of interview of _____

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He noted that soon after FLYNT left the Courtroom, FLYNT calmed down and was cooperative thereafter. He accompanied FLYNT to the Capitol Hill Hospital where FLYNT was allowed to use a restroom prior to being transported to the central cellblock of the METROPOLITAN POLICE DEPARTMENT.

FEDERAL BUREAU OF INVESTIGATION

Date of transcription 11/17/83

1

[redacted] PFC, U.S. Supreme Court Police, Washington, D.C., telephone 252-3345, was interviewed at his place of employment by [redacted] who identified himself as a Special Agent (SA) of the FEDERAL BUREAU OF INVESTIGATION (FBI).

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After being advised of the nature and purpose of the interview, [redacted] voluntarily provided the following information:

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He has been employed by the U.S. Supreme Court Police since 1959.

On the morning of November 8, 1983, the date LARRY FLYNT appeared at the Courtroom of the U.S. Supreme Court, [redacted] was assigned by his Superior, Lieutenant [redacted] to stand behind the curtain at the rear of the Courtroom, out of view of the public and the court. He noted that he was in uniform and uniforms are not allowed in the Court during session. His responsibility was to assist in the removal of LARRY FLYNT from the Courtroom should that become necessary. He took his position after LARRY FLYNT was situated in the Courtroom. He believes his position was approximately 10 feet away from LARRY FLYNT during the proceedings of the Court.

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Just shortly after 11:00 a.m., following the close of the presentation of the case involving FLYNT to the Court, LARRY FLYNT started shouting and cursing at the Justices of the Court. His immediate thought was to get FLYNT out of the Courtroom as quickly as possible. He is certain that he heard FLYNT say: "fuck this court" followed by several other words which may have included "fuck this motherfucking Court". He cannot specifically recall the several other words shouted by FLYNT. He does recall that after getting FLYNT outside the Courtroom he noted that FLYNT's shirt had printed on the front: "fuck this court". He does not believe that any of the Justices of the Court saw the shirt, but he cannot say for sure.

Investigation on 11/14/83 at Washington, D.C. Washington Field File # 72-274-10
by SA [redacted] :sg Date dictated 11/16/83

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Continuation of interview of _____

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He noted that FLYNT was very cooperative after being removed from the Courtroom. He does not recall that FLYNT was at all agitated prior to the case ending.

He accompanied FLYNT in FLYNT's rented limousine to the Capitol Hill Hospital, the Central Cellblock of the METROPOLITAN POLICE DEPARTMENT, and then on to the Federal Courthouse. He recalls that during this time there was a lot of small talk coming from FLYNT but FLYNT was cooperative although making statements to members of the news media as they left the Capitol Hill Hospital.

FEDERAL BUREAU OF INVESTIGATION

1

Date of transcription 11/17/83

[redacted] Lt., U. S. SUPREME COURT POLICE, Washington, D.C. (WDC), telephone [redacted] was interviewed at his place of employment by [redacted] who identified himself as a Special Agent (SA) of the Federal Bureau of Investigation (FBI).

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After being advised of the nature and purpose of the interview, [redacted] voluntarily provided the following information:

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He has been employed by the U. S. Supreme Court since September 9, 1983. He recently retired from the PRINCE GEORGE'S COUNTY POLICE DEPARTMENT after 24 years of service.

On November 8, 1983, after receiving knowledge that LARRY FLYNT planned to attend the session of the Supreme Court, he was assigned to meet the FLYNT party as they got off the elevator and to remain with FLYNT throughout the entire proceedings in the courtroom. He was to observe FLYNT and to escort him to the courtroom and to remain with him. He received his assignment from [redacted] Marshal of the Court.

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Approximately five minutes before 10:00 a.m. on November 8, 1983, he met the FLYNT party as they arrived on elevators at the first floor and proceeded to the courtroom. FLYNT had with him a minister and a principal attendant. He noticed that both FLYNT and the minister were each carrying a Bible. Those with FLYNT were wearing business suits. They were not introduced by name. Only FLYNT, his principal attendant and the minister, were allowed in the courtroom to hear the proceedings. Through FLYNT's Security Director, four other men in the party were requested to remain in the hallway. [redacted] assigned four police officers to remain with these individuals outside the courtroom.

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Prior to FLYNT, his principal attendant or Director of Security, and his minister entering the courtroom, they were taken to a private area of the corridor and a search

Investigation on 11/14/83 at Washington, D.C. File # Washington, Field 72-274 - 11
by SA [redacted] JFC:sgt Date dictated 11/17/83

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Continuation of interview of [REDACTED]

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was conducted of both of their persons and of a wheelchair used by FLYNT. The search was conducted by Lt. [REDACTED] and he was assisted by using a portable metal detector. FLYNT and those with him were courteous and cooperative throughout this search.

FLYNT, his Director of Security, and his minister were escorted to the courtroom just before the Court began session. [REDACTED] recalls that FLYNT's minister accompanied FLYNT, who remained in his wheelchair. The other attendant was assigned to sit on the other side of the courtroom. Captain [REDACTED] also sat near that location. [REDACTED] recalls that during the proceedings, these two men attending with FLYNT traded places on at least one occasion.

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It is [REDACTED] recollection that, during the proceedings, FLYNT requested and was allowed to leave the courtroom on two occasions. [REDACTED] recalls that one occasion was used by FLYNT to speak to an attorney, who was with the FLYNT party but not in the courtroom because he did not have a reservation. The other occasion was used by FLYNT to get a drink of water which was provided for him. [REDACTED] believes that each absence from the courtroom lasted approximately five or ten minutes.

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At approximately 11:03, FLYNT asked [REDACTED] when the proceedings would be ending. In order to purposely confuse FLYNT, in the event he had anything planned to disrupt the Court, [REDACTED] responded that 20 minutes remained. [REDACTED] knew that in fact the proceedings would end just shortly after 11:00, or one hour after the beginning of the proceedings. Just as [REDACTED] told FLYNT this, the proceedings were concluded with regard to FLYNT's case then being heard. Because [REDACTED] had just been speaking to FLYNT, he was very close to him. [REDACTED] heard the Chief Judge say that the case had been accepted and the proceedings stopped when [REDACTED] noticed FLYNT direct his eyes to the members of the Court. He also noticed that the Justices appeared to be waiting for FLYNT to leave the courtroom. It was at this moment that FLYNT shouted, directing his words to the front of the courtroom. [REDACTED] recalls that the first shouted words to come from FLYNT was: "Fuck this Court." He knows that FLYNT shouted several other words but [REDACTED] cannot recall exactly what they were. He directed his full attention to FLYNT as he noticed that FLYNT appeared to be unbuttoning his jacket. [REDACTED] placed his left hand on FLYNT's abdomen and around his chest area to make certain that FLYNT was not attempting to get a weapon. [REDACTED] had a portable radio in his right

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Continuation of interview of [REDACTED]

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hand. Because of [REDACTED] actions, he does not believe that FLYNT could see the Justices very well as he was shouting. A few seconds after FLYNT started shouting, another officer [REDACTED] arrived and both of them started to remove FLYNT from the courtroom. He is certain that FLYNT was still shouting as he was escorted out into the hall. [REDACTED] does not recall hearing anything said by any of the Justices.

As they got FLYNT out into the main hall outside the courtroom, [REDACTED] received instructions from Marshal [REDACTED] to the effect that FLYNT was not to be allowed to leave the building but rather he should be taken to the lawyers lounge.

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[REDACTED] accompanied FLYNT to the lawyer's lounge. FLYNT, at this time, was in the presence of two of his attorneys. He was cooperative and requested the use of a restroom. [REDACTED] was informed by the FLYNT party that a restroom equipped for the handicapped was needed. Inasmuch as an adequately furnished restroom was not available in the building, FLYNT's party was advised that arrangements would be made to take him to Capitol Hill Hospital for that purpose.

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Although in custody, [REDACTED] had not been advised that FLYNT was to be removed to the central cellblock of the METROPOLITAN POLICE DEPARTMENT (MPD). He called for a transport vehicle but as they attempted to leave the building, it became apparent that FLYNT, still in his wheelchair, could not fit in the vehicle, a police paddywagon. [REDACTED] then called for a court limousine, a Lincoln Towncar, but this too was not adequate. It was at this point that one of FLYNT's counsel offered the use of FLYNT's limousine in which he had arrived. This offer was accepted and some of FLYNT's attendants placed FLYNT in the limousine accompanied by himself and other members of the U. S. SUPREME COURT POLICE.

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At one point, while [REDACTED] was attempting to accomodate the FLYNT party regarding the trip to the hospital, [REDACTED] was contacted on the radio by Marshal [REDACTED] who advised that FLYNT was to be taken to the central cellblock of the MPD and charged with violation of Title 18, Section 401, and that Assistant United States Attorney [REDACTED] would meet them. After booking at MPD, [REDACTED] attempted to contact [REDACTED] but discovered that [REDACTED] was located at U. S. District Court. The party finally arrived at that location where the U. S. Marshal took custody of FLYNT.

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Washington, D.C.
November 23, 1983

United States Attorney
Washington, D.C.

Attention: Assistant United States Attorney
[redacted]

Re: Larry Flynt; Obstruction
of Justice

Dear Sir:

Enclosed for your consideration are the following:

- 1) FD-302 reflecting interview of [redacted]
November 14, 1983.
- 2) FD-302 reflecting interview of [redacted]
[redacted] November 14, 1983.
- 3) FD-302 reflecting interview of [redacted]
November 14, 1983.
- 4) FD-302 reflecting interview of [redacted]
November 15, 1983.
- 5) FD-302 reflecting interview of [redacted]
November 15, 1983.
- 6) FD-302 reflecting interview of [redacted]
November 15, 1983.
- 7) Copy of a receipt executed by Special Agent (SA)
[redacted] FBI, on November 21, 1983.
- 8) Official Transcript of Proceedings before the
Supreme Court, Case number 82-485, [redacted]
Petitioner v. Hustler Magazine, Inc., Et Al.,
November 8, 1983.

2-Addressee

1-WFO (72-274) *msw*

af JFC:msw

(3)



72-274-12

Searched	_____
Serialized	_____ <i>mb</i>
Indexed	_____
Filed	_____ <i>mb</i>

- 9) Two copies each of two audio cassette recordings copied from the Master Tape of the U.S. Supreme Court regarding Case number 82-485. These copies essentially contain only remarks made by Larry Flynt. One copy is at normal speed, the other at a slower speed.
- 10) A listing of Larry Flynt correspondence purported to have been received by the office of Supreme Court Justice Sandra Day O'Connor.
- 11) Copy of a statement prepared by Lieutenant [redacted] dated November 14, 1983.
- 12) Copy of a statement prepared by Captain [redacted] [redacted] dated November 14, 1983.
- 13) Copy of a statement prepared by P.F.C. [redacted] Sokoloski, dated November 14, 1983.
- 14) Copy of a statement prepared by Lieutenant [redacted] [redacted] dated November 10, 1983.
- 15) Copy of a Metropolitan Police Department report.

Very truly yours,

Theodore M. Gardner
Special Agent in Charge

By: [redacted]
Supervisory Special Agent

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FBI

TRANSMIT VIA:

☒ Teletype
☐ Facsimile
☐ _____

PRECEDENCE:

☒ Immediate
☐ Priority
☐ Routine

CLASSIFICATION:

☐ TOP SECRET
☐ SECRET
☐ CONFIDENTIAL
☐ UNCLAS E F T O
☒ UNCLAS
Date 11/23/83

411
038

FM WASHINGTON FIELD (72-274) (P) (C-7)

TO DIRECTOR FBI IMMEDIATE

ATTN: SUPERVISOR [REDACTED] PUBLIC CORRUPTION UNIT,

WCC SECTION CID.

BT

UNCLAS

LARRY FLYNT; INTERFERENCE WITH SUPREME COURT OF THE UNITED STATES;
 OBSTRUCTION OF JUSTICE; OO:WFO.

RE WFO TEL TO BU DATED NOVEMBER 14, 1983.

INVESTIGATION OF THIS MATTER BY WASHINGTON FIELD HAS RESULTED
 IN THE INTERVIEW OF SIX WITNESSES AT THE U.S. SUPREME COURT.

ADDITIONALLY, WASHINGTON FIELD HAS OBTAINED FOUR PREPARED STATE-
 MENTS BY WITNESSES (U.S. SUPREME COURT POLICE - USSCP). THERE
 WERE PREPARED AS AN ADMINISTRATIVE PROCESS OF THE USSCP.

WASHINGTON FIELD HAS ALSO OBTAINED COPIES OF THE SEGMENT OF THE
 MASTER TAPE WHICH WAS USED TO RECORD THE CASES PRESENTED BEFORE
 THE COURT AND WHICH CONTAIN THE VERBAL OUTBURST MADE BY FLINT
 WHICH IS THE BASIS OF THE CRIMINAL INFORMATION CHARGING HIM

1-WFO

JFC:msw

(1)

72-274-13
 SEARCHED _____ INDEXED _____
 SERIALIZED _____ FILED _____
 NOV 23 1983 FBI (13)

Approved: [Signature]

Transmitted

(Number)

(Time)

Per [Signature]

COTTS [Signature]

b6
 b7C

FBI

TRANSMIT VIA:

☐ Teletype
☐ Facsimile
☐ _____

PRECEDENCE:

☐ Immediate
☐ Priority
☐ Routine

CLASSIFICATION:

☐ TOP SECRET
☐ SECRET
☐ CONFIDENTIAL
☐ UNCLAS E F T O
☐ UNCLAS

Date _____

PAGE TW DE WF 0038 UNCLAS

WITH THE VIOLATION OF TITLE 18, USC SECTION 1507 (INTERFERRING, OBSTRUCTING, OR IMPEDING THE ADMINISTRATION OF JUSTICE).

FOR THE INFORMATION OF THE BUREAU, IT IS NOTED THAT DURING THE INTERVIEW BY WASHINGTON FIELD OF THE ASSISTANT MARSHAL OF THE COURT, IT WAS DETERMINED THAT DURING ORAL ARGUMENTS BY COURT APPOINTED COUNSEL FOR FLYNT BEFORE THE COURT, FLYNT ORIGINATED A NOTE THAT PASSED THROUGH THE CLERK OF THE COURT FOR DELIVERY TO FLYNT'S COURT APPOINTED COUNSEL, [REDACTED] THE NOTE, ADDRESSED TO SHAPIRO, WAS GIVEN TO THE ASSISTANT MARSHAL WHO DIRECTED IT TO THE DEFENSE COUNSEL TABLE. THE NOTE WAS SENT FROM THE COUNSEL TABLE, BACK TO THE ASSISTANT MARSHAL WHO READ THE NOTE AND PASSED IT ON TO CHIEF JUSTICE BURGER, WHO APPARENTLY READ THE NOTE. ACCORDING TO THE ASSISTANT MARSHAL, THE NOTE DIRECTED [REDACTED] TO INFORM THE COURT THAT HE WAS NOT COUNSEL OF FLYNT'S CHOICE AND FLYNT WAS THEREFORE BEING DENIED HIS RIGHTS. WASHINGTON FIELD UNDERSTANDS THAT THE NOTE IS STILL MAINTAINED BY THE COURT. THE UNITED STATES ATTORNEY'S OFFICE HAS CONTACTED [REDACTED] COUNSEL TO THE SUPREME COURT, IN AN EFFORT TO OBTAIN A COPY OF THAT NOTE.

ON THE MORNING OF NOVEMBER 23, 1983, FLYNT APPEARED BEFORE

Approved: _____ Transmitted _____ Per _____
(Number) (Time)

b6
b7c

FBI

TRANSMIT VIA:

- ☐ Teletype
☐ Facsimile
☐ _____

PRECEDENCE:

- ☐ Immediate
☐ Priority
☐ Routine

CLASSIFICATION:

- ☐ TOP SECRET
☐ SECRET
☐ CONFIDENTIAL
☐ UNCLAS E F T O
☐ UNCLAS

Date _____

PAGE THREE DE WF 0038 UNCLAS

U.S. MAGISTRATE [REDACTED] WASHINGTON, D.C., FOR ARRAIGNMENT AND STATUS HEARING. FLYNT PERSONALLY PETITIONED THE COURT TO ALLOW HIM TO REPRESENT HIMSELF WITH THE ASSISTANCE OF ADVISORS. THIS REQUEST WAS GRANTED BY THE COURT. FLYNT ALSO WAIVED HIS RIGHT TO HAVE THE TRIAL HEARD BEFORE A DISTRICT COURT JUDGE, THEREBY REQUIRING THE CASE TO BE HEARD BY MAGISTRATE DWYER. MAGISTRATE DWYER SET JANUARY 3, 1984, AS A DEADLINE TO RECEIVE WRITTEN MOTIONS AND JANUARY 19, 1984, AS A HEARING DATE.

IT IS ANTICIPATED THAT ADDITIONAL INVESTIGATION BY WASHINGTON FIELD WILL INVOLVE PRODUCING A TRANSCRIPT OF THE AUDIO TAPE AS WELL AS CONDUCTING POSSIBLE INTERVIEWS CONCERNING THE AFOREMENTIONED NOTE TO THE CHIEF JUSTICE UPON SPECIFIC REQUEST OF THE UNITED STATES ATTORNEY'S OFFICE AND IF CONSISTENT WITH THE DESIRES OF THE CHIEF JUSTICE TO HAVE THE MATTER FULLY DEVELOPED TO THE POINT OF RELEASING THE NOTE. OF COURSE BUREAU AUTHORITY WILL BE OBTAINED PRIOR TO ANY INTERVIEW OF THE CHIEF JUSTICE.

BUREAU WILL BE KEPT ADVISED OF SIGNIFICANT DEVELOPMENTS.

BT

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Approved: _____ Transmitted _____ Per _____
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FEDERAL BUREAU OF INVESTIGATION

1Date of transcription 11/30/83

The following is a transcription of an audio cassette recording, obtained by the Washington Field Office, Federal Bureau of Investigation, November 21, 1983, copied from the U.S. Supreme Court tape recorder. of the last remarks during oral arguments of Case 82-485 [redacted] v. Hustler Magazine) on November 8, 1983:

b6
b7C

Attorney [redacted]

---in considerable measure has been part of the richness and greatness of this country. Thank you.

Chief Justice:

Thank you gentlemen, the case is submitted. We'll hear arguments next in Calder against, ah, Jones and Ingalls.

Larry Flynt:

Fuck this court! You denied me counsel of my choice! Nine assholes and one token cunt! Goddamn motherfuckers!

Chief Justice:

Will you see that the Marshal---

Larry Flynt:

You fuckin' goin' arrest me?

Chief Justice:

Will you--- will you inform the Marshal to take that man into custody?

Investigation on 11/21/83 at WASHINGTON, D.C. File # WFO72-274 -14
by SA [redacted] JFC/msw Date dictated 11/29/83

b6
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AN0001 3280615Z

PP WF

DE AN

P230615Z NOV 830

C-4

FM ANCHORAGE (62C-NEW)

TO DIRECTOR PRIORITY

LOS ANGELES PRIORITY

WFO PRIORITY

BT

UNCLAS

ATTN: ORGANIZED CRIME SB

BY GENERAL CRIMES SECTION.

LARRY FLYNT; RUMORED FLIGHT FROM ANCHORAGE, ALASKA, TO THE FAR EAST, INFORMATION CONCERNING - MISCELLANEOUS.

FOR INFORMATION OF RECIPIENTS, ON THE EVENING OF NOVEMBER 2, 1983, FEDERAL AVIATION ADMINISTRATION (FAA), ANCHORAGE, CONTACTED THIS OFFICE AND ADVISED AS FOLLOWS:

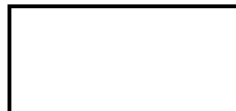
PA 11
9-5068

ALTHOUGH FAA'S INFORMATION WAS FRAGMENTARY, ITS UNDERSTANDING WAS THAT LARRY FLYNT (THE SAME INDIVIDUAL CURRENTLY EMBROILED IN THE DE LOREAN CASE IN LOS ANGELES) HAD CONTACTED U.S. AND/OR SOVIET OFFICIALS AND HAD INDICATED AN INTENTION TO TRAVEL BY AIR FROM ANCHORAGE USING THE SAME FLIGHT PATH THAT THE DOWNED KOREAN

2:22 AM
11/24/83
TEP

SEARCHED DE INDEXED DE
SERIALIZED MB FILED MB

Nov 24 1 39 AM '83



72-274-15
[Signature]

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PAGE TWO AN 62C-NEW UNCLAS

AIRLINES FLIGHT 007 TOOK WITH INTENDED DESTINATION OF SOUTH KOREA. FAA INDICATED THIS FLIGHT WAS PLANNED FOR ON OR ABOUT NOVEMBER 23, AND THAZ THE STATE DEPARTMENT WAS EXTREMELY CONCERNED THAT FLYNT MIGHT BE WILLING AND ABLE TO CONSUMMATE HIS PLAN. FAA REQUESTED ANY INFORMATION THE FBI MAY HAVE CONCERNING FLYNT'S PRESENT WHEREABOUTS AND TRAVEL PLANS.

THE MEDIA IN ANCHORAGE IS ONTO THIS STORY AND, OF COURSE, VERY INTERESTED. A PRESS REPRESENTATIVE ADVISED SAC, ANCHORAGE THIS DATE THAT HE HAS TRACKED FLYNT TO THE MADISON HOTEL IN WASHINGTON, D.C. AND IS GOING TO ATTEMPT TO REACH FLYNT FOR AN INTERVIEW.

FAA HAS NO KNOWLEDGE AS TO WHAT TYPE OF AIRCRAFT FLYNT MIGHT TRY TO EITHER BOOK PASSAGE ON OR CHARTER IN THIS RUMORED ATTEMPT. FAA FURTHER ADVISED IT ESSENTIALLY HAS NO POWER TO STOP FLYNT SHOULD HE BE SO FOOLISH AS TO ATTEMPT TO CHARTER AN AIRCRAFT AND COMPLETE HIS PLAN.

FBI, ANCHORAGE ASSUMES FLYNT'S PURPOSE, WERE HE TO UNDERTAKE THIS TRAVEL, WOULD BE TO SHOW THAT AN INNOCENT CITIZEN WOULD NOT BE SHOT DOWN BY SOVIET FORCES "PROVING" THAT FLIGHT 007 WAS IN FACT ON A ☐ SPY MISSION.

PAGE THREE AN 62C-NEW UNCLAS

FBI, ANCHORAGE SEES NO SPECIFIC FBI JURISDICTION IN THIS MATTER AND NO INVESTIGATION IS REQUESTED. ANCHORAGE WILL, HOWEVER, OPEN A CASE TO FOLLOW THIS RUMOR, AND LOS ANGELES AND FBIHQ ARE REQUESTED TO ADVISE ANCHORAGE SHOULD ANY INFORMATION INDICATING THAT FLYNT MAY PURSUE THIS RUMORED PLAN BE RECEIVED.

BT

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PP HQ LA LS WFO

DE CG

P 072336Z DEC 83

FM CHICAGO (180-28) (P) (SQ.8)

TO DIRECTOR PRIORITY

LOS ANGELES (180-113) (OC-3) PRIORITY

LOUISVILLE (INFO) PRIORITY

WFO (72-274) (INFO) PRIORITY

BT

UNCLAS

LARRY FLYNT; DESECRATION OF THE FLAG; ILLEGAL WEARING OF
MILITARY DECORATION; OO:LOS ANGELES; CONTEMPT OO:CHICAGO.

RE CHICAGO TELETYPE TO DIRECTOR DATED DECEMBER 4,
1983; CHICAGO TELCALL TO LOUISVILLE SUPERVISOR TOM
KNEIR, DECEMBER 7, 1983.

UNLESS OTHERWISE NOTED, ALL INVESTIGATION REPORTED
HEREIN CONDUCTED BY SA [REDACTED]

AS PREVIOUSLY REPORTED, FLYNT APPEARED SUNDAY
MORNING, DECEMBER 4, 1983, FOR INITIAL APPEARANCE BE-
FORE MAGISTRATE [REDACTED] AT CHICAGO. AT THAT TIME

SEARCHED _____ INDEXED _____

SERIALIZED *mb* FILED *mb*

Dec 7 6 42 PM '83



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BM

PAGE TWO

CG 180-28

UNCLAS

FLYNT DENIED HIS IDENTITY AND REQUESTED IDENTITY HEARING, WHICH WAS SCHEDULED FOR 3:30 P.M. TUESDAY! DECEMBER 6, 1983.

SUBSEQUENTLY FLYNT RETAINED CHICAGO ATTORNEY

[REDACTED] AND ON MONDAY, DECEMBER 5, 1983,

[REDACTED] ADVISED USA'S OFFICE THAT FLYNT WOULD STIPULATE

HIS IDENTITY AND WAIVE IDENTITY HEARING. THEREFORE HEARING BEFORE MAGISTRATE JURCO WAS MOVED UP TO 2:00 P.M., MONDAY, DECEMBER 5, 1983. AT THAT HEARING, WHEN MAGISTRATE HAD TAKEN THE BENCH AND IMMEDIATELY AFTER FLYNT WAS WHEELED INTO THE COURTROOM AND PLACED DIRECTLY IN FRONT OF THE MAGISTRATE, FLYNT REMOVED FROM BENEATH A TOWEL ON HIS LAP A FOLDED RED FLAG, SPIT UPON IT, AND THREW THE FLAG AT THE BENCH IN THE DIRECTION OF THE MAGISTRATE. AT THE SAME TIME FLYNT UNLEASHED A TORRENT OF PROFANE AND OBSCENE LANGUAGE \$843:53\$ -5 5 3 .-&854-53. XAGISTRATE

[REDACTED] RECESSED THE HEARING AND INSTRUCTED ATTORNEY

[REDACTED] TO SPEAK WITH HIS CLIENT (FLYNT) TO DETERMINE

IF THE PROCEEDINGS WOULD CONTINUE. FLYNT SUBSEQUENTLY

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b7c

PAGE THREE

CG 180-28

UNCLAS

RETURNED TO THE COURTROOM, APOLOGIZED TO THE MAGISTRATE AND THE PROCEEDINGS CONTINUED, UNTIL A SECOND OUTBURST ON THE PART OF FLYNT CAUSED THE PROCEEDINGS TO BE TERMINATED. FLYNT WAS REMOVED FROM THE COURTROOM.

THE USA'S OFFICE AT CHICAGO ON THE SAME DATE PREPARED A PETITION FOR A RULE TO SHOW CAUSE WHY LARRY FLYNT SHOULD NOT BE HELD IN CRIMINAL CONTEMPT OF COURT. ON THE FOLLOWING DAY, TUESDAY, DECEMBER 6, 1983, FLYNT APPEARED BEFORE CHIEF USDJ [REDACTED]

[REDACTED] IN THE SAME COURTROOM REGARDING THE CONTEMPT PETITION. FLYNT AGAIN HAD ATTORNEY [REDACTED] PRESENT, BUT CHOSE TO REPRESENT HIMSELF IN THE PROCEEDINGS, DURING WHICH HE READ A LENGTHLY SELF HYPENED PREPARED PETITION INTO THE COURT RECORD. THE PROCEEDING CONTINUED UNTIL FLYNT INITIATED AN OBSCENE AND PROFANE OUTBURST OF LANGUAGE DIRECTED AT JUDGE [REDACTED] JUDGE [REDACTED] HELD FLYNT IN CONTEMPT OF COURT AND SENTENCED HIM ON THE SPOT TO SIXTY DAYS IN THE CUSTODY OF THE ATTORNEY GENERAL.

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b7c

PAGE FOUR

CG 187-28

UNCLAS

JUDGE [REDACTED] ENTERED AND CONTINUED THE MATTER INVOLVING THE CONTEMPT PETITION REGARDING MAGISTRATE JURCO.

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BY A MESSAGE TRANSMITTED VIA THE METROPOLITAN CORRECTIONAL CENTER (MCC) STAFF TELEPHONICALLY TO THE CHICAGO FBI OFFICE ON NIGHT OF DECEMBER 4-5, 1983, AND A SECOND TELEPHONIC COMMUNICATION FROM THE MCC ON DECEMBER 6, 1983, FBI CHICAGO WAS ADVISED THAT FLYNT INDICATED A DESIRE TO SPEAK WITH THE FBI, SAYING HE WAS PREPARED TO GIVE UP HIS SOURCE IN THE DELOREAN TAPES MATTER, BUT THAT HE WOULD DO SO ONLY IN THE PRESENCE OF THE FBI AND THE UNITED STATES ATTORNEY. THIS INFORMATION WAS MADE KNOWN TO AUSA [REDACTED] NDI, CHICAGO, WHO ADVISED THAT AFTER CONSULTATION WITH THE USA, LOS ANGELES, IT WAS DETERMINED THAT ANY SUCH CONTACT OR COMMUNICATION ON THE PART OF FLYNT, AS ABOVE, RIGHTLY SHOULD BE HANDLED AT LOS ANGELES.

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SUBSEQUENTLY ON DECEMBER 6, 1983, LIEUTENANT

[REDACTED] MCC, CHICAGO, TELEPHONICALLY NOTIFIED

PAGE FIVE

CG 180-28

UNCLAS

THE FBI THAT HE (WHILE IN THE COMPANY OF TWO OTHER
FEDERAL CORRECTIONAL OFFICERS) HAD OVERHEARD FLYNT
IN CONVERSATION WITH HIS PHYSICAL THERAPIST, WHO
HAS BEEN ALLOWED INTO THE MCC TWO HOURS PER DAY
TO ADMINISTER ONGOING PHYSICAL THERAPY TO FLYNT.
FLYNT WAS GIVING HIS THERAPIST NUMEROUS INSTRUCTIONS
AND ORDERS, AND SHE WAS OBSERVED TO BE MAKING NOTES.
FLYNT WAS OVERHEARD TO ORDER HIS THERAPIST TO SEEK
NUMEROUS COURT ORDERS FOR VARIOUS MATTERS DESIRED
BY FLYNT, AND THEN FLYNT WAS HEARD TO SAY WORDS TO
THE EFFECT, "TELL MY PEOPLE TO BLOW-UP THE CHURCH."
FURTHER, FLYNT WAS HEARD TO GIVE INSTRUCTIONS TO
THE EFFECT THAT HIS PEOPLE SHOULD THROW RED PAINT
ON FEDERAL OFFICE BUILDINGS AND ON EMPLOYEES
COMING OUT OF THE MCC AND FEDERAL BUILDING AT
CHICAGO. LIEUTENANT [REDACTED] AND THE OTHER TWO
CORRECTIONAL OFFICERS WERE IN FULL VIEW OF FLYNT
WHEN THESE STATEMENTS WERE HEARD. INVESTIGATION
HAD DETERMINED THAT FLYNT, WHEN ARRESTED AT CHICAGO
ON THE EVENING OF SATURDAY, DECEMBER 3, 1983, WAS

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PAGE SIX

CG 180-28

UNCLAS

IN ROUTE TO LAKEVILLE (AKA SAILERSVILLE), KENTUCKY, WHERE HE PLANNED TO SPEAK THE FOLLOWING DAY AT THE STINSON CREEK BAPTIST CHURCH. FLYNT REITERATED THE SAME INFORMATION AS PART OF THE PETITION WHICH HE READ INTO THE COURT RECORD BEFORE JUDGE [REDACTED] AUSA POLALES, CHICAGO, THEREFORE INSTRUCTED THAT REPRESENTATIVES OF THE ABOVE CHURCH IN KENTUCKY BE ADVISED OF THE INFORMATION.

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RE TELCALL TO SUPERVISOR [REDACTED] LOUISVILLE DIVISION ON DECEMBER 7, 1983, PROVIDED ABOVE INFORMATION.

ON DECEMBER 7, 1983, AUSA [REDACTED] ADVISED HE HAD BEEN NOTIFIED BY JUDGE [REDACTED] THAT THE JUDGE WOULD ENTER AN ORDER THAT AFTERNOON DIRECTING THAT FLYNT BE REMOVED FORTHWITH TO LOS ANGELES AND THAT HE REMAIN IN THE CUSTODY OF THE ATTORNEY GENERAL FOR SIXTY DAYS. LOS ANGELES ADVISED TELEPHONICALLY SAME DATE.

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ADDE ND UM

JUDGE [REDACTED] RULED ENTIRE PROCEEDINGS AT CHICAGO

PAGE SEVEN

CG 180-28

UNCLAS

ARE AUCILLARY AND THAT FLYNT SHOULD BE HANDLED BY
THE COURT AT LOS ANGELES. WHILE LEAVING THE SIXTY
DAY SENTENCE INTACT, ALL OTHER MATTERS BEING LEFT
TO DISCRETION OF JUDGE TAKASUKI AT LOS ANGELES.

BT

1983-84 TERM

ISSUE No. **4**

October 21, 1983

PREVIEW

OF UNITED STATES SUPREME COURT CASES

CONTENTS

Estelle v. Wiggins	Docket No. 82-1135	55
Helicol v. Hall, et. al. Keeton v. Hustler Magazine, Inc., et al.	Docket No. 82-1127 Docket No. 82-485	57
State of Maine v. Richard Thornton Ray Oliver v. United States	Docket No. 82-1273 Docket No. 82-15	61
Bose Corporation v. Consumers Union of United States	Docket No. 82-1246	63
Secretary of State of Maryland v. Munson Company, Inc.	Docket No. 82-766	65

72-279-17

SEARCHED	INDEXED
SERIALIZED <i>my</i>	FILED <i>my</i>
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PREVIEW OF UNITED STATES SUPREME COURT CASES

PREVIEW OF UNITED STATES SUPREME COURT CASES for the 1983-84 Term (ISSN: 0363-0048) is published September through May, by the Public Education Division of the American Bar Association with the cooperation of the Association of American Law Schools and the American Newspaper Publishers Association Foundation. The views expressed in PREVIEW are those of the authors. Subscription price: \$50 per term. Postmaster: send address changes to American Bar Association, 1155 E. 60th Street, Chicago, IL 60637.

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Estelle v. Wiggins: Necessary Assistance or Unwanted Interference?

by Mitchell Lewis Rothman

Estelle v. Wiggins
(Docket No. 82-1135)

To be argued November 9, 1983

ISSUES

When Carl Edwin Wiggins, accused of armed robbery, decided he could do without a lawyer at his trial, he didn't have to go it entirely alone — the judge appointed two local attorneys to give standby support. But Wiggins may have received more help than he really wanted. In this case from Texas, the Supreme Court will decide whether the unwelcome assistance of one of his advisors violated Wiggins's right to represent himself in a criminal courtroom — a right guaranteed by the Sixth Amendment to our Constitution.

The constitutional right to represent oneself has been recognized only since 1975. This case marks the Supreme Court's first opportunity to tell us in greater detail what the right means. Its decision is thus bound to affect how criminal trials are run throughout the country.

The concept of self-representation creates difficulties in our adversary system. Because it allows lone Davids to take on the Goliath of the state, self-representation sometimes threatens an unfair result. Free choice and individual responsibility, values which underlie the right to represent oneself, may thus conflict with our desire to see justice done. How do we strike a balance? That is what the case of Carl Edwin Wiggins is all about.

Just how much control should defendants who represent themselves have over the course of their trials? At what point does outside assistance become interference — interference which might prejudice the jury, or prevent defendants (who, after all, must bear the consequences of conviction) from defending themselves as they see fit? And what should the judge or standby attorney do if a lay defendant seems to be making tactical or strategic mistakes? These are some of the larger issues at stake.

Expressed a bit more formally, the legal questions raised by the case are:

1. Did the courtroom conduct of one of Wiggins's standby lawyers violate his constitutional right to self-representation? Wiggins claims the lawyer interfered to such an extent that it became impossible for him to offer his own defense. The state of Texas, on the other

hand, argues the participation of the standby attorney was more limited — allowing Wiggins a genuine opportunity to manage his defense and make his own decisions.

2. Did the federal appeals court, whose decision in favor of Wiggins is being reviewed, correctly define the role of standby counsel? Texas contends the narrow role outlined by the appeals court threatens the fairness of criminal trials when defendants represent themselves and makes undeserved reversals of hard-won convictions more likely.

FACTS

This case began in 1972, with the armed robbery of a grocery store in San Antonio. Carl Wiggins of Corpus Christi was tried and found guilty of the robbery in January, 1973 and, as a repeat offender, was sentenced to life imprisonment. A few months later, however, this conviction was set aside because the state's indictment had been defective. Carl was reindicted and, in June of 1973, brought to trial again. As the second trial began, Wiggins asked that he be allowed to conduct his own defense. The trial judge approved but, over the defendant's protest, appointed two San Antonio attorneys, Ben Samples and R. Norvell Graham, as standbys for advice and consultation.

Graham's conduct is at the heart of this controversy. Taking a more active role than his colleague, he interrupted the proceedings to offer his own objections, even though the defendant refused such assistance, argued with the defendant in open court regarding the examination of witnesses and asked the court to declare a mistrial — against Wiggins's own clearly-expressed wishes. At least once, Graham cursed while bickering with the defendant. By the time the smoke cleared, Wiggins had been convicted and again sentenced to life in prison.

The Texas state courts denied Wiggins any relief on direct appeal. A federal district court then refused to grant Wiggins's request for a writ of habeas corpus but, most recently, on November 8, 1982, the Fifth Circuit Court of Appeals reversed the district court's decision, in effect the defendant's second conviction. In that decision, the Fifth Circuit ruled that standby counsel's function is to aid the defendant — if and when the accused requests help. Present only to give necessary advice, standby counsel is "to be seen and not heard;" standby lawyers cannot thrust their unwanted services upon defendants who have the right to conduct their own defense in their own way. In this case, the court declared, the defense presented to the jury was not Wiggins's defense. The Fifth Circuit went

Mitchell Lewis Rothman is an Associate Professor at Hamline University School of Law, 1536 Hewitt Ave., St. Paul, MN 55104; telephone (612) 641-2339.

on to say, attorney Graham's overzealous conduct had a negative impact on the jury's perception of the defendant and his case — making acquittal on the facts that much less likely.

BACKGROUND AND SIGNIFICANCE

In 1975, the Supreme Court recognized a constitutional right to represent oneself in *Faretta v. California*, 422 U.S. 806. Noting that most defendants lacked the skills of an experienced courtroom advocate, the Court in a footnote granted trial judges permission to appoint standby counsel — even over the objections of unwilling defendants — when the accused decided to proceed without an attorney. But standby counsel's precise role was left up in the air and no case since *Faretta* has clearly defined what standby counsel is to do. Thus, however it is decided, this case will eliminate some of the ambiguity in this area of the law.

Three paths seem open to the Court. It may agree with the appeals court and Wiggins and decide that standby attorneys should be "seen and not heard" unless the defendant actually requests help. Such a step would be in keeping with the logic of *Faretta*, for some of the language in that opinion suggests defendants can refuse the aid of standby lawyers, just as they can refuse the assistance of appointed counsel. If it decides to take this course, the Supreme Court will have to contend with Texas's argument that the "seen and not heard" rule makes it too easy for unscrupulous defendants and their standbys to "sandbag" the trial court. As a case is going down the drain, the state claims, defendants will remain silent as standbys intentionally interject, violating the "seen and not heard" rule and thus establishing grounds for later reversal.

Rather than adopt the appeal court's strict standard, the Court may rule that Graham's participation, though

unfortunate, was too limited to infringe Wiggins's right to self-representation. It may conclude that Wiggins had a genuine opportunity to defend himself on his own terms. Finally, it may go beyond the facts of this particular case to carve out broader guidelines for standby counsel, allowing their unsolicited intervention when necessary to protect the public's interest in a fair trial. Given the Court's natural reluctance to make broad doctrinal statements when the individual case before it does not so demand, either of the first two alternatives is more likely. Yet the American Bar Association's own suggested standards appear to call for a more active role for the standby attorney and the Court may use this opportunity to move the law in that direction.

ARGUMENTS

For the State of Texas

1. The assistance rendered by the court-appointed standby, Graham, was intermittent and did not infringe the defendant's right of self-representation.
2. As long as the accused has a genuine opportunity to act in his or her own behalf, the constitutional right is protected. The rule that standby counsel "be seen and not heard" is rigid and unworkable and could operate to the detriment of the defendant, the state and the entire criminal justice system.

For Wiggins

1. Graham's conduct was not isolated or incidental, but rather destroyed any chance the defendant had to conduct a coherent, personal defense.
2. Because the right to represent oneself is personal to the accused, the defendant must be able to present the defense of his or her choice. Only the "be seen and not heard" rule can make this possible.

The Personal Jurisdiction Cases

by Robert H. Abrams

Helicopteros Nacionales de Colombia, S.A. (Helicol)
v.
Hall, et al.
(Docket No. 82-1127)

Keeton v. Hustler Magazine, Inc., et al.
(Docket No. 82-485)

To be argued November 8, 1983

ISSUES

These two cases are the latest chapters in the Supreme Court's oversight of state court jurisdictional power. This genre of cases, addressing the legal issue of personal jurisdiction is concerned with the limits of state power under the Due Process Clause of the Fourteenth Amendment of the Constitution. Specifically, the Court defines the conditions under which a state court may enter a judgment that binds an unconsenting non-resident defendant to its terms.

Thus these two cases concern a somewhat technical procedural issue, but in spite of the technicality of the issue involved — in personam jurisdiction — its centrality in the litigation process makes these cases rather important. (In addition, the fact that *Hustler* magazine is a party to *Keeton* makes that case newsworthy, and the defamation issues raised by the case are naturally of great interest to the publishing world.

All lawsuits in American courts must be initiated either by seizing property belonging to the defendant or by obtaining personal jurisdiction over the defendant. Personal jurisdiction, the more common method, requires that the defendant have both adequate notice of the legal action and sufficient contacts with the forum so that defending the action there is fair. The decisions in *Helicol* and *Keeton* are particularly important because they will probably offer guidance about when defendants who do business on a national scale can be sued in various locations.

The cases present two somewhat different situations, one in which a company is sued in a state in which it does significant business, but the claim is unrelated to that activity (*Helicol*), the second in which a company is sued in a state in which it does a very small volume of business but the claim is related to that activity (*Keeton*). Taken to-

gether (and with a slightly different interpretation of Keeton's facts), the two cases could offer an opportunity for the Supreme Court to announce and define a concept of "general in personam jurisdiction." This concept would govern the question of when a defendant has sufficient ties with a state that its courts are a constitutionally permissible forum for any litigation involving that defendant. The potential significance of these cases have attracted several influential amici to file briefs with the Court.

The specific legal issues raised by the *Helicol* case are:

1. Whether the due process clause bars a state from exercising in personam jurisdiction over a foreign corporation that makes substantial equipment purchases in the forum state when the lawsuit is unrelated to those purchases.
2. Whether the due process guarantees of the Fourteenth Amendment protecting defendants from unfair assertions of personal jurisdiction apply with equal force to alien defendants.

The specific legal issues raised by the *Keeton* case are:

1. Whether, consistent with due process, a non-resident defamation plaintiff may obtain in personam jurisdiction over a non-resident defendant publisher in a state in which defendant sells only a tiny percentage of its magazines.
2. Whether sale of a few hundred magazines in the forum state constitutes sufficient minimum contact with that state to allow the exercise of in personam jurisdiction over the magazine's publisher in a case related to an alleged defamation published in those magazines.
3. Whether the burden on First Amendment freedom of speech prohibits the exercise of in personam jurisdiction over defendant publisher in a defamation suit wholly between non-residents of the forum state.
4. Whether plaintiff's status as resident or non-resident of the forum state is relevant in determining if due process is offended by a particular exercise of in personam jurisdiction.

BACKGROUND AND SIGNIFICANCE

Historically, the area of state court jurisdictional power was dominated by rather strict conceptual rules that defined state court power on a territorial basis. If the defendant was found within the forum state and served with process, the state court obtained power to bind the defendant personally. (This is in personam jurisdiction. All of the defendant's assets are available to satisfy any in personam judgment that the plaintiff might obtain.) Throughout the 19th century, and for perhaps as much as the first 30 years of this century, in personam jurisdic-

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tion over non-residents was not permitted, and suits against them could only be commenced pursuant to a seizure of property belonging to them within the forum state. A judgment obtained in these cases could be satisfied only from the seized property. If a non-resident defendant either had no property within the forum, or if the in-forum property was not very valuable, the plaintiff was forced to seek redress in another location, usually where the defendant resided.

Over time and with the advent of ever increasing levels of interstate and international commerce, the territorial limitation of in personam jurisdiction became unworkable. States began to draft "long-arm" statutes which asserted judicial power over non-resident defendants. The main limitation on these statutes was that their invocation not offend the Fourteenth Amendment's guarantee of due process. The formula which has come to express that limitation is that the assertion of jurisdiction over the defendant must be consistent with "fair play and substantial justice." The decisions of the Court employing this linguistic formula require that a defendant have at least "minimum contacts" with the forum in order to satisfy the Constitution.

Although personal jurisdiction appears to be a rather technical issue, it has surprisingly important practical consequences in the litigation of cases. Initially, it acts as a primary determinant of the place in which a case may be brought. If personal jurisdiction over a defendant cannot constitutionally be maintained, the lawsuit cannot go forward in that forum. This locational impact of personal jurisdiction directly affects the convenience of both plaintiffs and defendants. Often, for example, plaintiffs will desire to litigate "at home," thereby minimizing the expense of litigation. Similarly, plaintiff may wish to choose a forum with which he is more familiar. These factors are evident in the *Helicol* case. Secondly, the choice of forum for litigation can sometimes influence the choice of law that will govern the litigation. The court in which the suit is brought is free within a very broad range of choices to apply its own law to govern the case rather than either the law of the place where the events at issue occurred, or the law of some other state that has substantially more connection with the subject matter of the litigation. This factor is critical in the Keeton case, since New Hampshire courts would apply a longer statute of limitations than any other state, thereby allowing the case to go forward even though it would be untimely if litigated anywhere else.

Apart from the general importance of personal jurisdiction cases in the litigation process, each of these cases portrays a fairly common fact pattern of substantial concern to major industries within the United States, and indeed throughout the world. The *Helicol* case, at a somewhat abstract level, is a case in which a state is asserting in personam jurisdiction over a non-resident solely on the basis that the non-resident regularly does a large volume of business in the state, even though that regular business has no relation whatever to the lawsuit in which jurisdic-

tion is exercised. For manufacturers and vendors of products that are sold on a large scale throughout the nation, a Supreme Court decision sustaining jurisdiction in the *Helicol* case is the harbinger of ill tidings. Not only will they be sued hither and yon, but their fear will be realized that plaintiffs will be free to forum shop for the best choice of law in suits against them. Although *Helicol*'s facts, which involve a helicopter crash in Peru, may limit the scope of the Supreme Court's decision, there is no necessary reason to believe that will be the case.

The Keeton case is viewed as critically important by the publishing and broadcasting industries because reversal by the Supreme Court would significantly increase their exposure to defamation suits in locales having relatively little relation to the harms alleged. Allegedly defamatory national publications or broadcasts would be actionable in every state, and a plaintiff could select a state having the most favorable substantive law, or, as in Keeton, a state having the longest statute of limitations. The monetary consequences of these suits are all the more significant because the court that adjudicates the case is required to award damages for *all* harms done by the defamation, in the forum state and everywhere else.

Historically, national publishers and broadcasters have not always fared well in defamation cases brought in remote locations. Indeed, the milestone case of *New York Times v. Sullivan*, 376 U.S. 254 (1964), which granted First Amendment protection to the media in defamation cases, arose in a forum state in which the *Times* did a negligible business. If the Court upholds Keeton in her suit against *Hustler*, the case would give plaintiffs in nationwide defamation suits a virtually unlimited choice of forum, a prospect of substantial concern to the media.

HELICOL FACTS

In early 1974, in response to the Peruvian government's request for bids on an oil pipeline to run from the interior jungles of that country to the Pacific Ocean, three American companies formed a joint venture (Williams-Sedco-Horn) that ultimately was the successful bidder. Peruvian law forbade the construction of the pipeline by a non-Peruvian company, so the American consortium formed a Peruvian corporation (Consortio) which was awarded the contract. Because surface transportation couldn't get to the areas through which the pipeline would run, the joint venture sought out *Helicol* as a potential provider of helicopter services for the project.

Helicol, a Colombian corporation, and the joint venturers entered into negotiations which took place in the United States. One of the meetings was held in Texas. At the conclusion of the negotiations a contract between *Helicol* and Consortio was signed in Peru in late 1974. These negotiations were not *Helicol*'s sole contact with the state of Texas. *Helicol* also had a long history of helicopter purchases from a Texas supplier. The sales figure for the period from 1970-76 was in excess of four million dollars. The purchases included equipment as well as

training of Helicol pilots and service staff in Texas.

In performing the work on the pipeline, Consorcio relied on employees of the American joint venture. Specifically, a number of engineers and technicians were hired by Williams-Sedco-Horn at its home office in Houston, Texas, and dispatched to Peru to perform services. This group of employees included Dean Hall, Jesse Lewallen, Leonard Moore, and Elton Porton, none of whom lived in Texas, but all of whom were United States citizens. These men were all killed in the Peruvian jungle on January 26, 1976, when a Helicol helicopter crashed into a tree in heavy fog.

Lawsuits were brought by their survivors in Harris County, Texas, against their employer, Williams-Sedco-Horn, the helicopter manufacturer, Bell Helicopter (which has its principal place of business in Texas), and Helicol. Helicol objected that the Texas court lacked in personam jurisdiction over it. This motion was denied and the case proceeded to trial. Helicol was found negligent in the operation of the helicopter and a jury verdict totalling more than one million dollars was entered covering the losses incurred by the various surviving relatives of the dead men.

Helicol successfully appealed on the jurisdictional issue to the Texas Court of Civil Appeals. In essence that court found that the case was not one for which the long arm statute was intended. The opinion (616 S.W.2d 247 (Tex. Ct. Civ. App. 1981)) did discuss matters relevant to the argument that exercise of jurisdiction would violate the federal Constitution, but did not decide the case on that basis. The Texas Supreme Court reviewed the case and initially, on February 24, 1982, issued an opinion affirming the Court of Civil Appeals decision to dismiss the suit against Helicol. Hall and the other plaintiffs sought and obtained rehearing, and the Texas Supreme Court on July 21, 1982, withdrew their earlier opinion and sustained the exercise of in personam jurisdiction over Helicol, thereby reinstating the million plus in jury verdicts.

The Texas Supreme Court was divided into three camps in its final decision. Justice Wallace, writing for the majority found that Helicol's contacts with Texas were sufficient to allow the Texas courts to adjudicate the case. Justice Campbell's concurring opinion focused more attention on the need of plaintiffs to be able to obtain a forum within the United States, noting at one point that "it is unreasonable to require the widows and children seeking relief here to go to a foreign country to prosecute their action." Finally, Justice Pope dissented in an opinion displaying general agreement with the view that the Texas long arm was not intended to reach a case which itself has so little to do with Texas. The case is reported at 638 S.W.2d 870 (Tex. 1982).

HELICOL ARGUMENTS

For Helicol

1. Due process forbids Texas from the exercise of in personam jurisdiction over Helicol in a suit unrelated to Texas when Helicol's contacts with Texas are not substantial.
2. An alien non-resident is entitled to due process protection against assertions of personal jurisdiction to the same extent as U.S. citizens.
3. Texas infringes on federal prerogatives relating to foreign relations and international trade by its exercise of jurisdiction over a foreign corporation for claims that stem from incidents that occurred outside of the United States.

For Hall

1. Due process does not bar assertion of in personam jurisdiction because Helicol's contacts with the forum state are substantial and continuous.
2. Regular purchases by the non-resident defendant in the forum state are relevant to the determination of whether the defendant has sufficient minimum contacts to sustain in personam jurisdiction.
3. A case of action totally unrelated to the defendant's contacts with the forum state may, under appropriate circumstances, fall within the in personam jurisdiction of that state's courts.
4. Due process is not offended by Texas' exercise of in personam jurisdiction over Helicol in this case.

For Amici Curiae Supporting Helicol

Amicus Curiae United States of America argued:

1. Helicol's helicopter purchases in Texas do not support in personam jurisdiction over Helicol in an action unrelated to those purchases.

Amicus Curiae Motor Vehicle Manufacturers Association argued:

1. A forum that is neither a corporation's home or principal place of business violates due process by exercising in personam jurisdiction over the corporation in a cause of action having no relation to the forum state.
2. A forum state having no interest in the occurrence that gives rise to the cause of action and no interest in protecting non-resident plaintiffs cannot constitutionally exercise in personam jurisdiction over a foreign corporation.
3. A foreign corporation is not amenable to in personam jurisdiction merely because it conducts business in the forum state unrelated to the cause of action.

KEETON FACTS

In several of its monthly issues in 1975 and 1976, Hustler Magazine and its publisher Lary Flynt published a cartoon, several photographs, stories and correspondence that were allegedly defamatory of Kathy Keeton. In early 1977 Keeton filed a lawsuit in Ohio, Hustler's place

of incorporation and principal place of business, seeking damages for both libel and invasion of privacy. Both of these claims were dismissed by the Ohio courts as being barred by the statute of limitations. Shortly thereafter, in October, 1980, Keeton, a citizen of New York, filed this suit in the United States District Court in New Hampshire, obtaining federal subject matter jurisdiction on the basis of diversity of citizenship. Once again she alleged that *Hustler* had libelled her in 1975-76.

The district court found that *Hustler's* activities in New Hampshire were sufficient to bring them within the ambit of that state's long arm statute. The court also found that *Hustler's* in-state contacts — the distribution of a few hundred copies of their magazine — although very minimal, were not random or isolated and were purposefully directed at New Hampshire. Keeton's contact with the forum was even more attenuated, her sole contact being that her name appeared on the masthead of three magazines that enjoyed some local circulation. Judge Caffrey concluded that the exercise of jurisdiction over *Hustler* would violate due process because of the minimal nature of the forum contacts of all parties to the litigation, as well as the lack of interest of the State of New Hampshire in protecting non-resident plaintiffs like Keeton from defamation injuries.

In affirming the dismissal, the First Circuit Court of Appeals, speaking through Judge Breyer, stressed the point that the bulk of the damage for which recovery was being sought had occurred in states other than New Hampshire. It concluded that *Hustler* lacked sufficient contact with New Hampshire to allow that state to entertain a suit for claims that, in the main, arose elsewhere. (This description of the critical determination that faced the court views the Keeton case as presenting a close parallel to the *Helicor* case, *i.e.*, an instance in which the court is attempting to decide when the exercise of general in personam jurisdiction is constitutionally permissible.) The opinion of the Circuit Court is reported at 682 F.2d 33.

KEETON ARGUMENTS

For Keeton

1. The Court of Appeals improperly focused on Keeton's lack of contact with the forum rather than *Hustler's* substantial contacts with the forum.
2. The decision below erroneously ignored the fact that a portion of the damage suffered in this case occurred in the forum.
3. The decision below erroneously allowed its distaste for

the choice of law consequences of permitting the exercise of in personam jurisdiction to influence its judgment on the jurisdictional issue.

For Hustler Magazine and Larry Flynt

1. Except where suit is brought in plaintiff's home state, due process in a multistate defamation case requires that the forum state be the site of substantial damage to plaintiff's reputation that constitutes a significant focus of the action.
2. The First Amendment does not permit a state to penalize a publisher for the simple fact of minimal local sales by requiring the publisher to defend against claims of injury bearing no bona fide relationships to those sales.
3. The commerce clause prohibits predicated general in personam jurisdiction over cases brought by non-residents upon defendant's engaging in interstate commerce.
4. No factual showing has been made that permits the exercise of in personam jurisdiction over the parent corporation of *Hustler* or over Larry Flynt personally.

For Amici Curiae supporting Hustler Magazine

Amicus Curiae CBS Inc., Dow Jones & Co., the Hearst Corporation, the Magazine Publishers Association, the Miami Herald Publishing Co., Newsweek Inc., the New York Times Company, the Reporters Committee for Freedom of the Press, Sigma Delta Chi, Time, Inc., and the Tribune Company argued that:

1. In defamation actions, where the only contact between the defendant, the forum, and the cause of action is in-state circulation, due process bars assertion of in personam jurisdiction.

Amicus Curiae the Association of American Publishers, Inc. argued that:

1. Due process precludes an out-of-state plaintiff from suing an out-of-state publisher for libel where the publisher's contacts with the forum are minimal, the plaintiff's contacts even more minimal, and the forum state's interest is negligible.
2. The First Amendment buttresses the conclusion that in personam jurisdiction cannot be sustained in this case.

Amicus Curiae Motor Vehicle Manufacturers Association argued that:

1. Due process and full faith and credit prevent a forum from exercising jurisdiction over or applying its own law to a case with which the forum state has no substantial contacts.

The "Open Fields" Cases: Does the Right to Privacy Extend to Marijuana Fields?

by Edward T. McMahon

State of Maine
v.
Richard Thornton
and
Ray Oliver
v.
United States of America
(Docket Nos. 82-1273 and 82-15)

To be argued November 9, 1983

In two cases that may affect law-enforcement's ability to combat illegal drug trafficking, the Supreme Court will decide whether the Fourth Amendment permits warrantless searches for marijuana fields on private property. The two cases were joined because they have almost identical facts and issues but had different results in the lower courts.

These cases involve the high-profile illicit drug industry. As the government has acted to stem the flow of foreign marijuana into this country, more and more Americans have turned to marijuana as a cash crop.

The cases are also interesting because the result may affect the modern-day surveillance techniques used by police searching for marijuana. If the Court holds that police may not trespass on rural land to look for drugs without a warrant, does this also mean that police aircraft may not fly over the property looking for the very same drugs?

ISSUES

The legal issues presented by the case are:

1. Whether the Fourth Amendment requires a warrant based on probable cause as a precondition to entry onto a field.
2. Whether the "Open Fields Doctrine" set down by the Court in *Hester v. U.S.* (1924) has been modified by the Court's holding in *Katz v. United States* (1967) that the Fourth Amendment protects people not places.
3. Whether posting signs and erecting fences gives property owners a legitimate expectation of privacy as to activities conducted in their fields.
4. Whether the privacy intrusion in a search of a field is so limited that a police should be allowed to conduct

warrantless searches where they have "reasonable suspicion" of criminal activity.

FACTS

The facts of the cases are almost identical. In *Oliver v. United States*, an informant told a Kentucky state police officer that Oliver was growing marijuana on his farm. Based on a tip and some rumors about activities at the farm, the police drove to Oliver's farm to investigate.

At the farm the police drove down a road 3/4 of a mile past Oliver's residence, until they reached a locked gate with a "No Trespassing" sign. Getting out of their car, the police went around the gate and walked down a path into the woods. Several hundred yards down the path they heard someone yelling that there was no hunting allowed. The police identified themselves, but the person shouting at them disappeared. Returning to the path the officers walked some distance further and then discovered a large field of marijuana.

Oliver was arrested and indicted in the United States District Court for the Western District of Kentucky for manufacturing marijuana. Prior to trial he moved to suppress the evidence obtained during the warrantless search of his property. The district court granted his motion. A three-judge panel of the U.S. Sixth Circuit Court of Appeals affirmed, but rehearing before the full court reversed the suppression order and allowed the evidence to be admitted.

In *Maine v. Thornton* an informant told a Maine state trooper that he had seen marijuana growing in the woods behind Thornton's house in rural Maine. The police then drove to Thornton's, parked their car in front of a mobile home, and walked into the woods behind the residence. They followed a foot path, crossed an old stone wall, and found the marijuana growing in a heavily wooded area 500 feet from the defendant's house.

Unlike Oliver, Thornton was charged in state court. Prior to trial the state court granted Thornton's motion to suppress the evidence obtained during the police search of his property. The government then appealed to the Supreme Court of Maine, which affirmed the suppression order. The court held that the Fourth Amendment applied to the woods surrounding the marijuana fields and that the warrantless entry by the police into the woods did not fit any of the exceptions to the Fourth Amendment warrant requirement.

The cases now before the Supreme Court underscore a longstanding problem facing police trying not to run afoul of the Fourth Amendment — nearly identical facts elicit different results.

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BACKGROUND AND SIGNIFICANCE

Cultivating, distributing and selling drugs like marijuana has become a multi-billion dollar enterprise. Likewise, the government's efforts to combat illicit drug traffic involve vast resources. The federal and state governments now employ thousands of people, sophisticated technology, and whole fleets of cars, boats, and aircraft in the war on drugs.

One result of all this activity is the growing importance of the Fourth Amendment in drug cases. Last term the Court decided nine Fourth Amendment cases. All of them involved drug charges. While wide disagreement has marked the opinions of the individual justices, the Court as a whole has favored broadening the powers of the police in the war on drugs.

For example, last term the Court upheld the use of electronic beepers and sniffer dogs. It also sanctioned the warrantless boarding of ships and boats located in waters offering ready access to the open seas. These open field cases, while not quite as glamorous as drug smuggling at sea, also involve police searches conducted without a warrant.

As expected, the government argues that there is no constitutional right to privacy in open fields and wooded areas. The government relies on the "open fields" doctrine set down by the Court in *Hester v. U.S.*, 265 U.S. 57 (1924). In this case the Court held that the "special protection" accorded by the Fourth Amendment to the people in their *persons, houses, papers, and effects* is not extended to open fields.

In response, the defendants argue that the *Hester* "open fields" doctrine has been modified by the Court's holding in *Katz v. United States*, 389 U.S. 347 (1967). In this case the Court ruled that "the Fourth Amendment protects people not places." What matters is not where a search takes place but whether the individual at whom the search is directed has a reasonable expectation of privacy.

Both Oliver and Thornton had well hidden marijuana fields. "No Trespassing" signs, gates, fences, and thick woods surrounded their crops. The defendants contend that these measures give rise to an actual expectation of privacy and that this expectation is one which society is prepared to accept as reasonable.

The government disagrees. It contends that it is unreasonable to recognize the right to privacy in an open field. People don't conduct private relations in a field, and if they do they can't reasonably expect not to be observed. Even fields surrounded by fences are subject to observation from the air and thus cannot be regarded as wholly private.

The right to privacy has been described as "the right to be left alone." These cases will determine whether the right to be left alone extends to rural fields and woods where marijuana may be cultivated. If the right to privacy does extend to rural fields, then the police may be forced to rely on aircraft, infra-red photography, or other forms of investigation to combat marijuana growing. On the other hand, if the right to privacy doesn't apply to fields

and woods, the Court will enshrine yet another exception to the warrant requirement. It may also mean that we will hear the footsteps of police as they tramp through the woods searching for green fields of marijuana.

ARGUMENTS

For the Government

1. The Fourth Amendment does not require a warrant based on probable cause as a "precondition to entry onto a field."
2. The "open fields" doctrine set down in *Hester v. United States* (1924) retains its vitality and applies to these cases.
3. It is unreasonable to recognize the right to privacy in an open field, even one that is fenced, posted, and secluded. This is because farm fences are designed primarily to mark boundaries or to keep animals in, not to keep people out.
4. Ownership of property does not automatically create a right to privacy because the Fourth Amendment protects privacy not property.
5. Even if the search of a field does violate the right to privacy, the intrusion involved is so limited that weighed against the government interest in fighting crime, such a search is "reasonable" if it is based on reasonable suspicion of criminal activity.

For the Defendants

1. The government's searches of the defendants' property were illegal because they were made without a warrant and without exigent circumstances.
2. The government's contention that the "open fields" doctrine of *Hester v. United States* applies to these cases is without merit. This is because the open fields doctrine was modified by the Court's holding in *Katz v. United States* (1967) that the Fourth Amendment protects people not property.
3. The defendants exhibited an actual and reasonable expectation of privacy by securing their property with fences, "No Trespassing" signs and other measures.
4. Numerous lower courts have held that the open fields exception to the warrant requirement is not applicable when the search was conducted in an area from which the public was excluded.

AMICUS ARGUMENTS

Given the interests involved it is not surprising that the case has generated some friends of the court. Five amicus curiae briefs were filed with the Court. A number of states and several police organizations filed briefs on behalf of the government. The Farm Bureau Federation, the ACLU, and several legal aid organizations filed briefs in support of the defendants. The arguments generally mirror those outlined above with one interesting wrinkle. The Farm Bureau brief argues that private farms are like "factories without walls" and that farmers should be able to conduct their business in privacy like any other businessmen.

The Bose 901 Product Disparagement Suit How Badly Can One Speak About Speakers?

by Lee Arbetman

Bose Corporation
v.
Consumers Union of the United States, Inc.
(Docket No. 82-1246)

To be argued November 8, 1983

ISSUES

In this case the Supreme Court is asked to look at a specific procedural question arising under the line of public figure/defamation actions that began with the landmark case of *New York Times v. Sullivan*, 376 U.S. 254 (1964). In these lawsuits brought by public figures against publishers, the Court recognizes that lies and false communications do not serve the ends of the First Amendment. At the same time, the Court also attempts to preserve our "profound national commitment to the principle that debate on public issues should be uninhibited, robust and wide open," to give "the freedoms of expression ... the breathing space that they need to survive." (*New York Times*)

To provide the necessary "breathing space," the Court has said that public figures can only recover damages in defamation cases when they produce clear and convincing proof that the defamatory statement was false and made with "actual malice" (i.e., knowledge of falsity or reckless disregard of the truth or falsity of the statement).

In *Bose*, a lawsuit was brought against Consumer's Union (CU) for allegedly disparaging the Bose 901 loudspeaker in a published analysis of loudspeakers in CU's monthly magazine. At trial, Bose won a libel judgment of more than \$200,000. On appeal, the First Circuit reversed, finding that Bose had not met the precise constitutional standards for "actual malice" established in the *New York Times* case.

To understand the procedural issue here, one must remember the general rules for legal appeals: 1) questions of fact are determined at trials by the finder of fact (i.e., the jury in a jury case; otherwise by the judge); 2) questions of fact are not ordinarily reviewable on appeal unless the trial court is clearly erroneous, and 3) appellate courts can and do review questions of law (as opposed to fact) on appeal.

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Put simply: Bose won at the trial level by successfully proving that CU had published a false and disparaging statement with actual malice. Bose lost on appeal because the appellate court made its own judgment as to whether the facts proven by Bose constituted "actual malice." In the appeal to the Supreme Court, Bose argues essentially that an appellate court has no business overturning the trial judge's finding of actual malice.

FACTS

The May, 1970, issue of *Consumer Reports* included an article entitled "Loudspeakers" which evaluated 24 loudspeakers based on a series of objective tests and measurements conducted by CU's engineers. The article's review of the Bose 901 speaker included the following language: "Worse, individual instruments heard through the Bose system ... tended to wander about the room." Dr. Amar G. Bose, president of the company and inventor of the speaker system, sought a retraction of the statement. CU refused, and Bose filed suit in the Federal Court for the District of Massachusetts in February of 1971.

Before going to trial, Dr. Bose asked CU to repeat the tests in his presence, to identify the record(s) used in the tests, and to use the record(s) with other loudspeakers to determine whether any unusual audio effect was caused by the record as opposed to the speaker. CU refused these requests and stood behind the validity of the evaluation procedures they had used.

In a lengthy trial, the two CU engineers who had tested and then reported on the Bose speakers were cross-examined as to what they had meant by "wander about the room." Their response indicated that they were dealing with an abstract, subjective perception of an ambiguous aural phenomenon. Bose contended that the language they used was false and harmful to the sales of their product.

The trial court found the testimony of CU's engineers to be lacking in credibility on some important issues and held that the statement that the "instruments wandered about the room" was, in fact, false and disparaging. The court also found that in the area of loudspeakers Bose was a public figure. This required that Bose produce clear and convincing evidence that the statement was false and disparaging and that the statement was made with actual malice, as defined in the *New York Times* case. However, the trial court accepted Bose's contention that, because "wandering about the room" was theoretically impossible and because CU's engineers were experts, they must have known that their analysis was false.

On appeal, the First Circuit held it would "independently

dently examine the record to ensure that the district court has applied properly the governing constitutional law and that the plaintiff [Bose] has indeed satisfied its burden of proof." A federal rule of civil procedure (rule 52a) limits appellate review of facts determined at trial to those that are clearly erroneous, a standard that precludes almost all review of facts found at the trial.

BACKGROUND AND SIGNIFICANCE

As mentioned, the United States Supreme Court decided the landmark *New York Times v. Sullivan* in 1964. Since then, decisions in similar cases before the Court have clarified: 1) who should be treated as a public figure or public official (in order to know when the *New York Times* standard should be used) and 2) the meaning of the "actual malice" standard, including the quantum of proof required (*i.e.*, clear and convincing evidence).

New York Times and its progeny have been significant in upholding the press' right to inquire into and report on public events. While the press' protection from liability for defamation is not absolute, the Supreme Court has recognized that "the honest utterance, even if inaccurate, must be protected because it furthers the fruitful exercise of the rights of free expression." *Garrison v. Louisiana*, 379 U.S. 64, at 75 (1964).

The focus of *Bose* is on a technical, procedural issue. The decision is not likely to expand or restrict the substantive scope of *New York Times* or its progeny. However, a decision for CU will reaffirm that appellate courts can review the trial record to ensure that mixed questions of law and fact (such as whether there was actual malice in this case) have been decided according to constitutional standards. If the Court reverses the decision of the First Circuit and reinstates the trial court's judgment for Bose, it would appear to be: 1) a departure from past Supreme Court cases dealing with this procedural issue in similar, though not identical, situations and 2) a message that appellate review may be sharply circumscribed, even in cases where fundamental rights are at stake.

ARGUMENTS

For the Bose Corporation

1. According to the federal rules of civil procedure, it is settled that findings of fact not be set aside unless clearly erroneous, even when constitutional rights are asserted.
2. The district court's finding that the testimony of CU's

engineers was not credible, along with other evidence, provides clear and convincing proof that CU published the false and disparaging statement with actual malice.

3. By rejecting the trial judge's findings on the credibility of witnesses and by relying on testimony the trial judge found not credible, the court of appeals has deprived Bose of property without due process of law.
4. Nothing in *New York Times* or its progeny allows the court of appeals to ignore the requirements of the federal rules of civil procedure.

For CU

1. The independent appellate review carried out by the court of appeals to determine whether the constitutional actual malice standard was properly applied is a substantive right unaffected by a rule of civil procedure.
2. The district court's determination on actual malice was based on an error of law so it is not subject to procedural rules and was properly reversed by the court of appeals.
3. The district court's finding of actual malice was clearly erroneous (and therefore properly reversed even if subject to procedural rules).

For Amici Curiae Supporting CU

As in other press cases before the Court, the important issues at stake have attracted several friends of the court. One amicus brief was submitted jointly by the ACLU and the Civil Liberties Union of Massachusetts; the other was submitted jointly by a 12-party group of journalists, publishers, broadcasters and associations of newspaper publishers and editors.

The ACLU contends that "to entrust to the trial court near-final power to find the facts and to determine that the facts have been properly found would create a grave danger of erosion of constitutional rights through distorted fact-finding." The second brief argues that Supreme Court precedent and strong public policy reasons underlying the First Amendment require that courts of appeal conduct independent review of the evidentiary basis for a district court's conclusion that the challenged statement was published with actual malice. The amici contend that the rights protected by *New York Times* would be threatened by a rule of law that would subject those who review and evaluate to standards of verbal accuracy that are as impossible to articulate as they are to meet.

Charitable Contributions: A First Amendment Challenge to One State's Efforts to Stop Fraud

by Margaret E. Fisher

Secretary of State of Maryland

v.

Joseph H. Munson Company, Inc.

(Docket No. 82-766)

To be argued October 31, 1983

ISSUE

Can a state limit charities fundraising expenditures without violating the First and Fourteenth amendments? Does a professional fundraiser have the right (standing) to argue the First Amendment rights of charities in its challenge to a state law requiring that charities spend no more than 25% of their gross income on fundraising?

FACTS

Joseph Munson Company, Inc., a professional business promoter, wanted to conduct the fundraising events of a chapter of the Maryland Fraternal Order of Police (FOP). However, it ran into conflict with a Maryland criminal statute that limits spending by charities to 25% of their gross income, unless Maryland's Secretary of State issues a permit on finding that the 25% limit would effectively prevent the charitable organization from raising contributions. Maryland had passed this law in an attempt to protect its citizens from fraudulent charitable organizations. Munson wanted to charge more than the 25% limit would allow.

Finding that one chapter of FOP was reluctant to contract with it, Munson challenged the Maryland Solicitation Law, Article 41, Section 103 of the Maryland Code, as an unlawful delegation of legislative authority to an administrative agency and as a violation of free speech and assembly of the First Amendment, as made applicable to the states through the Fourteenth Amendment.

The Circuit Court for Anne Arundel County, in an unreported opinion, ruled that the statute was constitutional. The court said that the authority given to the Secretary of State to issue rules and regulations establishing exceptions to the 25% limit was a lawful delegation of legislative authority, even though the statute did not outline the majority of situations that might constitute an exception to the limit.

The Circuit Judge also ruled that the 25% limit did not impose a prior restraint on free speech since a permit was

not required prior to solicitation unless the expense was more than 25%. The court rejected Munson's claim that the exceptions to the percentage limit were too narrow. The court distinguished the Maryland statute from one that was ruled to be unconstitutional in *Village of Schaumburg v. Citizens for Better Environment*, 444 U.S. 620 (1980).

In that case, the state required that all charities obtain a permit for solicitation and that permit would only be issued when 75% of the proceeds would directly be used for charity. Since this law was inflexible and did not take into account organizations that had valid reasons for spending less than 75% directly on their charitable purposes, the Supreme Court ruled that the law violated the Constitution. However, the Maryland law provided an adequate "escape hatch" by providing for authority of the Secretary of State to make exceptions.

On appeal, the Court of Special Appeals, 48 Md. App. 273, 426 A.2d 985 (1981), agreed with the trial court that the Maryland statute was constitutional. It also ruled that Munson had the right to challenge the Maryland law.

The Court of Appeals for Maryland, 448 A. 2d 935 (1982), reversed this decision. First, however, it agreed that Munson did have standing as an interested party to challenge the statute, since it had lost a contract opportunity because of the 25% limit and because the prosecutor had threatened prosecution if Munson failed to comply with the law. It agreed that Munson could raise the FOP's First Amendment rights since Munson had a business relation with that organization that was impaired by the statute.

When it came to the constitutional issues, the Court applied *Schaumburg*. It ruled that the Maryland statute involves a sweeping prior restraint of free speech since 1) prior to any solicitation, the law requires professional fundraisers to register, submit information under oath, pay a fee and meet other requirements; 2) contracts between charitable and professional fundraisers must be submitted to the Secretary of State within ten days of the contract and a permit obtained when the cost of the contract exceeds the 25% limit; and 3) the Secretary of State has the power to cancel the registration of suspected violators or refer them to the Attorney General.

The court also ruled that the threat of criminal sanction is as much a prior restraint as the requirement of a permit before every solicitation. The law is also unconstitutionally intrusive since an organization may be criminally liable for failing to meet the 25% limit if it acts without the permit issued for exceptions to the law, even though no fraudulent misrepresentation is present.

The court said the narrow exception to the 25% limit

Margaret E. Fisher is Adjunct Professor of Law at University of Puget Sound Law School, Tacoma, WA 98104; telephone (206) 756-3327.

violates the constitutional right of charities to make policy decisions to spend more than 25% on other than charitable purposes.

SIGNIFICANCE AND BACKGROUND

The Supreme Court's decision may impact greatly the structure of charity spending. If Munson wins, charities may continue to operate with flexibility in their spending choices. If the state wins, the door is opened to regulate in such a way as to restrict greatly their spending choices. Charitable organizations that operate through education and advocacy rather than through direct services to the needy may be even more greatly impacted if the state wins. Also, charities that represent less popular views will have a more difficult time putting on fundraisers than charities representing popular causes, if the law is found to be constitutional.

The decision will also establish guidelines for states to follow when attempting to curb abuse of solicitations by fraudulent charitable organizations.

The case will also establish more clearly when commercial entities can raise the constitutional rights of others in First Amendment challenges.

ARGUMENTS

For Secretary of State of Maryland

1. Munson does not have the right to challenge Maryland's flexible limitation on fundraising costs and to assert the First Amendment rights of charities.
2. A percentage limit on fundraising costs of charities, which involves no prior restraint and is both flexible and moderate, does not violate the First Amendment.

For Joseph H. Munson Company, Inc.

1. Munson has standing to challenge the Maryland Solicitation Law since it has suffered injury in fact — loss of business and the possibility of criminal prosecution — and it may raise the rights of Maryland charities because of the relationship between Munson's activities and the rights of the charitable organizations and because the challenge involves the First Amendment regardless of its application to Munson's activities.
2. Because there exists a substantial category of organizations that combine fundraising with advocacy and information-gathering rather than direct services, and because a percentage limit favors popular causes over unpopular ones, and because organizations have considerations other than costs when choosing their activities, a 25% limitation statute is unconstitutional.
3. The Maryland statute substantially limits First Amendment activity without a sufficiently related state interest and it is not the least drastic means by which those interests could be served.
4. The exemption power of the statute is far too narrow in scope and alternatively vests excessive discretion in state officials, making it unconstitutionally vague.

AMICUS CURIAE

Lined up with the state of Maryland are the states of Connecticut, Illinois, Kansas, Massachusetts, New Jersey, New York, Pennsylvania, South Dakota, and Tennessee.

Joining Munson are Independent Sector; member organizations of Independent Sector, individually; National Health Council, Inc. representing member voluntary health agencies; Box Office, Inc.; American Civil Liberties Union; and the American Civil Liberties Union of the National Capital Area.

SUBJECT INDEX OF CASES

Copyright

Sony Corp. of America v. Universal City Studios, Inc. (81-1687) (*Preview* 1-3)

Criminal Procedure

Dixon v. U.S. (82-5279), Hinton v. U.S. (82-5331) (*Preview* 13-14)

Fifth Amendment

Minnesota v. Murphy (82-827) (*Preview* 33-35)

First Amendment

Bose Corp. v. Consumers Union (82-1246) (*Preview* 63-64)

City Council of Los Angeles v. Taxpayers for Vincent (94 Orig.) (*Preview* 31-32)

Press Enterprise v. Superior Court (82-556) (*Preview* 37-39)

Secretary of State of Maryland v. Munson Co., Inc. (82-766) (*Preview* 65-66)

Fourth Amendment

Maine v. Thornton (82-1273), Oliver v. United States (82-15) (*Preview* 61-62)

Michigan v. Clifford (82-357) (*Preview* 15-17)

Welsh v. Wisconsin (82-5466) (*Preview* 19-21)

Jurisdiction

Helicol v. Hall (82-1127), Keeton v. Hustler Magazine, Inc. (82-485) (*Preview* 57-60)

Pennhurst State School & Hospital v. Halderman (81-2101) (*Preview* 27-29)

Migra v. Warren City School District (82-738) (*Preview* 41-43)

Labor

Bureau of Alcohol v. Federal Labor Relations Authority (82-799) (*Preview* 49-52)

Nuclear Energy

Silkwood v. Kerr-McGee Corp. (81-2159) (*Preview* 5-7)

Religion

Lynch v. Donnelly (82-1256) (*Preview* 9-10)

RICO

Russello v. United States (82-472) (*Preview* 11-12)

Sixth Amendment

Estelle v. Wiggins (82-1135) (*Preview* 55-56)

Taxation

South Carolina v. Regan (94 Orig.) (*Preview* 23-25)

Commissioner v. Engle (82-599), Farmer v. United States (82-774) (*Preview* 45-48)

ALPHABETICAL INDEX OF CASES

Bose Corp. v. Consumers Union (82-1246) (*Preview* 63-64)

Bureau of Alcohol v. Federal Labor Relations Authority (82-799) (*Preview* 49-52)

City Council of Los Angeles v. Taxpayers for Vincent (94 Orig.) (*Preview* 31-32)

Commissioner v. Engle (82-599), Farmer v. United States (82-774) (*Preview* 45-48)

Dixon v. U.S. (82-5279), Hinton v. U.S. (82-5331) (*Preview* 13-14)

Estelle v. Wiggins (82-1135) (*Preview* 55-56)

Helicol v. Hall (82-1127), Keeton v. Hustler Magazine, Inc. (82-485) (*Preview* 57-60)

Lynch v. Donnelly (82-1256) (*Preview* 9-10)

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Migra v. Warren City School District (82-738) (*Preview* 41-43)

Minnesota v. Murphy (82-827) (*Preview* 33-35)

Pennhurst State School & Hospital v. Halderman (81-2101) (*Preview* 27-29)

Press Enterprise v. Superior Court (82-556) (*Preview* 37-39)

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OF UNITED STATES SUPREME COURT CASES

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FEDERAL BUREAU OF INVESTIGATION

1

Date of transcription 12/15/83

[redacted] Assistant Clerk, Clerk's Office, U. S. Supreme Court, Washington, D.C. (WDC), telephone 252-3135, was interviewed in the Office of the Clerk of the Court by [redacted] who identified himself as a Special Agent (SA) of the Federal Bureau of Investigation (FBI).

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Having been advised of the nature and purpose of the interview, [redacted] voluntarily provided the following information:

b6
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She has been employed in her present position since June, 1981.

She recalls that on November 8, 1983, Case No. 82-485, [redacted] v. Hustler Magazine, Inc., et al, was being argued before the Court and LARRY FLYNT was in attendance. She was at work that day and intended to watch some of the proceedings in person.

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At approximately 10:15 that morning, a tall thin white male in his mid-thirties, nicely dressed in a business suit, came into the Clerk's Office and identified himself to her as a counsel for LARRY FLYNT and he stated that he had to get a note to his co-counsel, [redacted] who was presently in the Courtroom preparing to argue before the Court. He handed her a single piece of paper, which was folded, and which she believes had the name of [redacted] written on the outside. She recollects that there was some sort of seal or monogram on the inside of the folded paper at the top and preceeding the writing contained in the note. She is certain that she did not read the note. Her immediate response was to tell the gentleman that she did not think they were supposed to deliver notes to arguing counsel but he responded that if Shapiro had not started arguing yet, was it possible to get the note to him. She noted that she was alone in the Clerk's Office and did not have anyone to resolve the question in her mind. She told the gentleman that she was going up to the Courtroom anyway and she would see

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Investigation on 12/8/83 at Washington, D.C. File # Washington Field 72-274-18
by SA [redacted] JFC:sgt Date dictated 12/9/83

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Continuation of interview of [REDACTED]

, Page

-2-

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what she could do about having the note delivered as requested. At this, the gentleman departed and she went on her way to the Courtroom.

When she arrived at the alcove adjoining the Courtroom, she looked for her superior, [REDACTED] Deputy Clerk of the Court, but did not see him. She then asked a Police Officer standing near the entrance on the Marshal's side of the Courtroom if he thought it was possible to deliver a note to counsel. He responded that he did not know, but motioned for a messenger and took the note. She noted that by that time, [REDACTED] [REDACTED] had started arguing before the Court. She took her seat in the alcove and listened to this proceedings from there. She had no further knowledge concerning the disposition of the note.

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She recalls that after the case had been presented to the Court, and the Chief Justice had announced that the case had been submitted, LARRY FLYNT shouted from where he was seated in the rear of the Courtroom. She cannot recall precisely what he shouted, but knows the first sentence contained the words: "counsel of my choice" and then some obscenities to include "goddam this whole fucking Court." She noted that he was still shouting as he was quickly escorted out of the Courtroom. She left the proximity of the Courtroom at that same time and returned to her office.

FEDERAL BUREAU OF INVESTIGATION

1Date of transcription 12/15/83

[] Marshal of the Court, U. S. Supreme Court, Washington, D.C. (WDC), telephone [] was interviewed in his office by [] who had previously identified himself as a Special Agent (SA) of the Federal Bureau of Investigation (FBI).

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Having been advised of the nature and purpose of the interview, [] voluntarily provided the following information concerning recordings made in the Courtroom during arguments heard before the Court:

The U. S. Supreme Court currently uses an Ampex Model AG-400 tape recorder which utilizes magnetic tape on a 10½ inch reel containing 3,600 feet of tape. The speed normally used during recording is 1 7/8 RPS. Recordings are made on two channels monaural.

We noted that there are 12 microphones in the Courtroom; one for each Justice, one for the Marshal, and two at the podium. These are connected to a mixer where the signal is split; one channel going to an equalizer and thereafter used by the official Court Reporter, the other channel going to an equalizer and thereafter to the Court tape recorder. Two JBL 60 watt amplifiers are used in the systems.

Investigation on 12/8/83 at Washington, D.C. File # Washington Field 72-274 -19
by SA [] JFC:sgt Date dictated 12/9/83

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FEDERAL BUREAU OF INVESTIGATION

1

Date of transcription 12/15/83

[redacted] Messenger/Courtroom Attendant and Library Assistant, U. S. Supreme Court, Washington, D.C. (WDC), telephone [redacted] was interviewed at the Lawyer's Lounge, U. S. Supreme Court, by [redacted] who identified himself as a Special Agent (SA) of the Federal Bureau of Investigation (FBI).

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Having been advised of the nature and purposes of the interview, [redacted] voluntarily provided the following information:

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She recalls that she was a Courtroom Attendant on November 8, 1983, when Case No. 82-485, [redacted] v. Hustler Magazine, Inc., et al, was being argued before the Court. She was in her normal position behind the Justices on the bench and that this was a normal assignment for her. One of her assignments is to deliver messages to and from the Justices as requested.

She recalls that on the morning of November 8, 1983, as [redacted] was arguing before the Court, she was motioned over to the alcove of the Courtroom by a Police Officer. She went over to the Officer, who was just outside the Courtroom, and he had another individual standing with him. She cannot recall anything about that person but knows she was handed a note for delivery to arguing counsel. She cannot specifically recall the name on the outside of the note but believes it must have been [redacted] because she thought the request was "funny" in that she wondered how to deliver a note to arguing counsel. She recalls asking the Assistant Marshal, then seated at the Court Crier, as to what she should do with the note. She was told by the Assistant Marshal, [redacted] to give the note to someone seated at the counsel table and pointed to which counsel table. She did this and returned to take her place on the bench.

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After she returned to her seat, she noted that the gentleman to whom she delivered the note, walked over to Assistant Marshal [redacted] and gave him the note. It is her recollection that either she or [redacted] was motioned over to [redacted] and thereafter the note

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Investigation on 12/8/83 at Washington, D.C. File # Washington Field 72-274-20
by SA [redacted] JFC:sgt Date dictated 12/9/83

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Continuation of interview of _____

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was delivered by one of them to the Chief Justice on instruction from [REDACTED]. She has no recollection as to what then happened to the note.

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After the case has been presented and the Chief Justice had announced that the case had been submitted and called the next case, she left her position to replenish drinking water for the arguing counsel. It was at this point that she heard LARRY FLYNT, then seated in a wheelchair at the rear of the Courtroom, shout at the Justices of the Court. While she cannot recall precisely what he said, she believes that his words included "you've denied me counsel of my choice" and "goddam mother-fuckers." She was so upset and shocked at this outburst that she began shaking. She continued on her way to complete her tasks as FLYNT was removed from the Courtroom.

FEDERAL BUREAU OF INVESTIGATION

1Date of transcription 12/15/83

[redacted] Police Officer, U. S. Supreme Court Police, Washington, D.C. (WDC), telephone [redacted] was interviewed by [redacted] who identified himself as a Special Agent (SA) of the Federal Bureau of Investigation (FBI).

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Having been advised of the nature and purpose of the interview, Sartori voluntarily provided the following information:

He has been employed in his position since December, 1963.

He recalls that he was working at the U. S. Supreme Court on November 8, 1983, and while the Court was in session was stationed at a post at the Marshal's side of the Courtroom in the alcove just outside the entrance to the Courtroom. This was one of his normal assignments and it was not out of the ordinary for him to be there when the Court is in session.

He recollects that at one time he did receive a note from [redacted] for delivery to an arguing counsel inside the Courtroom. While he cannot specifically recall that this occurred on November 8, 1983, it happened only once and that it could have well been on that day.

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After receiving the note, which he recalls was addressed to Counsel in the Courtroom, he got the attention of a messenger. He does not recall who the messenger was but he is certain that he gave the note to the messenger. He is certain that he did not enter the Courtroom to hand the message to the messenger because this would have been completely out of order. He cannot specifically recall what instructions he gave the messenger but believes the name on the outside of the note was enough to get the note on its way. He is certain that he did not read the note and cannot remember the name on the outside. He did not notice what the messenger did with the note once it left his possession.

Investigation on 12/8/83 at Washington, D.C. File # Washington Field 72-274-21
by SA [redacted] JFC:sgt Date dictated 12/9/83

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FEDERAL BUREAU OF INVESTIGATION

1

Date of transcription 12/20/83

[redacted] Social Studies, History and Law Teacher, Severna Park High School, Robinson Road, Severna Park, Maryland, telephone [redacted] was interviewed at his place of employment by [redacted] who identified himself as a Special Agent (SA) of the Federal Bureau of Investigation (FBI).

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Having been advised of the nature and purpose of the interview, [redacted] voluntarily provided the following information:

He has been employed at the High School since 1970.

On November 8, 1983, he accompanied seventeen senior high school students, comprising his Constitutional Law Class, to the U. S. Supreme Court, Washington, D.C. (WDC), to watch oral arguments before the Court. He noted that the date was chosen by him some two months in advance and this was approximately his twentieth such trip to the Court with students from the school. When the date for the trip was chosen, he did not have any knowledge as to what cases would be heard. He recalls that several days prior to taking this trip, he reviewed U. S. Law Week to determine what cases would be heard. He then did some research at a law library in Annapolis and gave to the students a brief of the cases to be heard. He felt this process was of value to his students.

After having been seated in the U. S. Supreme Court Courtroom on November 8, 1983, and after having been made aware that the first case involved Hustler Magazine, he noticed that LARRY FLYNT was brought into the Courtroom in his wheelchair as a spectator.

It is his recollection that following oral arguments of the case, and after Chief Justice Burger announced that the case had been submitted and called

Investigation on 12/14/83 at Severna Park, Maryland File # Washington Field 72-274-22
by SA [redacted] JFC:sgt Date dictated 12/15/83

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Continuation of interview of [REDACTED]

-2-

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the new case, he and his students began filing out of the Courtroom and were very close to the location of LARRY FLYNT, who was seated at the rear of the room.

As he and his students approached LARRY FLYNT, he watched and heard FLYNT begin shouting in a loud voice toward the Justices. It is his recollection that FLYNT shouted the following statements:

"Fuck this Court."

"You've denied me counsel of my choice."

"I won't be judged by nine assholes and one token cunt."

Following this outburst, he noted that the police officers in the Courtroom escorted Flynt out.

He recalls that his students appeared to be shocked at the outburst as were other spectators. A friend of his, [REDACTED] a Baltimore Morning Sun reporter, was in the Courtroom at the time and quickly asked [REDACTED] if he heard what was thought to have been shouted by FLYNT. [REDACTED] repeated what he had heard FLYNT shout. Subsequently, while still at the Court, [REDACTED] was interviewed by the Cable News Network as was one of his students.

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[REDACTED] noted that this experience generated a lot of class discussion the next day at school. He said that he had given his students, as he always does, a strict code to follow while at the Supreme Court. he instructed them that they were not to talk, sleep, pass notes, or to misbehave in any manner while in attendance. He cautioned them that any such behavior would be an embarrassment to him and to themselves. He stated that he felt LARRY FLYNT's behavior certainly destroyed his portrayal that the Supreme Court was to be afforded great respect.

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[REDACTED] stated that following the incident, he asked his students to write down their reactions to the happening and he has maintained these written comments. He stated that while his students have heard obscenities during their life, it was his impression that the students were shocked and outraged at the behavior of LARRY FLYNT.

72-274-23

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[Redacted] LD OFFICE	

[Signature]

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72-274-24

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FBI - WASH FIELD OFFICE	

[Signature]

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72-274-25

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	FIELD OFFICE

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United States District Court
NORTHERN DISTRICT OF ILLINOIS
Eastern Division

RECEIVED

DEC 6-1983

FRANK J. MCGARR
U. S. DISTRICT COURT
CHIEF JUDGE

In the Matter of

LARRY FLYNT

Case Number: 83CR 0950

APPEARANCES ARE HEREBY FILED BY THE UNDERSIGNED AS ATTORNEY(S) FOR:

(A)	(B)
	SIGNATURE
	NAME
	FIRM
	STREET ADDRESS
CITY/STATE/ZIP 	CITY/STATE/ZIP
TELEPHONE NO. 	TELEPHONE NO.
MEMBER OF TRIAL BAR? ☐ Yes ☐ No	MEMBER OF TRIAL BAR? ☐ Yes ☐ No
TRIAL ATTORNEY? ☐ Yes ☐ No	TRIAL ATTORNEY? ☐ Yes ☐ No
(C)	(D)
SIGNATURE	SIGNATURE
NAME	NAME
FIRM	FIRM
STREET ADDRESS	STREET ADDRESS
CITY/STATE/ZIP	CITY/STATE/ZIP
TELEPHONE NO.	TELEPHONE NO.
MEMBER OF TRIAL BAR? ☐ Yes ☐ No	MEMBER OF TRIAL BAR? ☐ Yes ☐ No
TRIAL ATTORNEY? ☐ Yes ☐ No	TRIAL ATTORNEY? ☐ Yes ☐ No

PLEASE COMPLETE IN ACCORDANCE WITH INSTRUCTIONS ON REVERSE

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

CHIEF JUDGE MCGARR

IN RE LARRY FLYNT

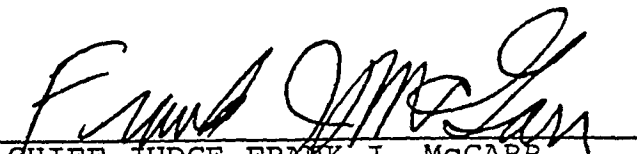
)
) No. **83CR0950**
) Chief Judge Frank J. McGarr
)

RULE TO SHOW CAUSE

TO: Larry Flynt and
Stephen Zucker, Esq.
his attorney
5225 Old Orchard Road
Suite 26B
Skokie, Illinois 60077

Upon the petition of the United States of America, it
is hereby ordered that:

Larry Flynt show cause on 6th day of Dec, 1983,
at 12:00 PM at MCC, why he should not be adjudged
and held in contempt of court and punished for such contempt of
this court by reason of the fact that he willfully and contemptuously
disturbed the removal proceeding going forward before the Honorable
Olga B. Jurco, United States Magistrate on December 5, 1983, in
the hearing room at the Metropolitan Correctional Center in Chicago,
Illinois.


CHIEF JUDGE FRANK J. MCGARR
United States District Court
for the Northern District
of Illinois

DEC 6 - 1983

72-274-26

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DEC 21 1983	
FBI - WASH. FIELD OFFICE	
	<i>me</i>

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[] (MAGISTRATE [] CLERK): Good afternoon, uh this is [] This is Monday, December 5, 1983 at the MCC testing the machine and the meter reading is zero.

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b7C

(Pause)

(Background Noises and Conversations)

MAGISTRATE []:

United States of America versus Larry Flynt. Well Mr. Flynt I have been informed...

LARRY FLYNT:

That's an American flag you dumb cunt now let's talk about free expression you fourteen carat piece of shit you no good dog mother fucker.

MAGISTRATE []

Umm, just would you remove Mr. Flynt...

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FLYNT:

When I get to Washington you know what I'm gonna do? I'm gonna arrest your ass.

MAGISTRATE []

Let's remove Mr. Flynt.

FLYNT:

And put you in jail you dumb mother fucker.

MAGISTRATE []:

[] I suggest that you speak to him while he's down here.

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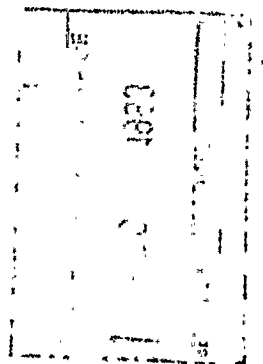
[] ESQ.:
[] FOR FLYNT)

Yeah I was going to ask for a recess.

MAGISTRATE []

I'll give you at least about 15 minutes otherwise it's just not going to be. Thank you []

(Pause)



CG 180-28

FLYNT:

Uh yes your honor first of all I'd like to start by apologizing to the court for my behavior and uh secondly uh I move that we make the hearing at this moment and request an identity because I think in a matter of minutes by calling one person to the stand I can prove that I am not the person or that was arrested in California or that the indictment in itself is faulty.

MAGISTRATE

Well Mr. Flynt you have the assistance of [REDACTED] you're aware of that.

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FLYNT:

Oh I don't, I don't need him. All I need is the court's permission to call uh out one witness your honor.

MAGISTRATE

And who is that witness?

FLYNT:

Uh my nurse [REDACTED]

UM:

She's not here. She's not around here.

MAGISTRATE

So.

FLYNT:

Okay we, uh I could call uh [REDACTED] if she's here.

MAGISTRATE

Is [REDACTED] here?

FLYNT:

Yes.

UM:

Could you see?

MAGISTRATE

Very well.

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b7C

FLYNT:

Is uh [REDACTED]

Yes, I'm here.

CG 180-28

FLYNT:

Okay, he will be fine.

MAGISTRATE

And

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b7C

FLYNT:

Yes.

MAGISTRATE :

.

FLYNT:

Yes ma'am.

(Pause)

CLERK:

Would you raise your right hand please, you do solemnly swear that the testimony that you are about to give will be the truth, the whole truth, and nothing but the truth so help you God.

I do.

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b7C

CLERK:

Be seated.

(Pause)

MAGISTRATE

All right Mr. Flynt.

FLYNT:

Where do you reside

In Thousand Oaks, California.

FLYNT:

What...

MAGISTRATE

Umm if, may I just interrupt.

FLYNT:

(Inaudible).

MAGISTRATE

Your full name, your full name, the full name of this witness.

MAGISTRATE

CG 180-28

MAGISTRATE [REDACTED]

[REDACTED]

MAGISTRATE [REDACTED]

FLYNT:

[REDACTED]

FLYNT:

[REDACTED]

FLYNT:

[REDACTED]

FLYNT:

[REDACTED]

FLYNT:

MAGISTRATE [REDACTED]

[REDACTED]

All right.

I live at [REDACTED]

[REDACTED]

All right Mr. Flynt.

State your profession.

[REDACTED]
[REDACTED] Mr. Flynt.

How did you first uh meet me?

I met you by a telephone call umm,
about a film project that we
were...

What was the film about?

James Douglas Morrison or Jim
Morrison, lead singer of the
Doors, now deceased.

Uh did I not tell you at that
time that uh, my name was
spelled F-L-I-N-T.

You did.

Uh I'm not trying to, I'm
trying to make this speak I am
going I hope you don't think
I'm leading the witness. I am
just going to merely say
something and if I say
anything that is not true feel
free to interrupt me. Your
honor do you have a problem
with that?

It's not the usual procedure
Mr. Flynt but indeed you
know...

I'm under sworn testimony. I will
tell the truth to my ability.

b6
b7C

b6
b7C

CG 180-28

MAGISTRATE

FLYNT:

MAGISTRATE

FLYNT:

FLYNT:

FLYNT:

FLYNT:

FLYNT:

FLYNT:

FLYNT:

Very well.

Okay.

We'll try it.

Uh to the best of my recollection at that time, I told you that my ancestors were named Flynnstein and they were from Copenhagen, Denmark.

Correct.

And that they moved to your home in Liverpool.

That's correct.

That's what we had in common.

Yes sir.

And that they came to this country on the Mayfair.

Uh Mayflower.

And they settled in Southern Virginia, Southern North Carolina.

That's correct.

There was three of them. They all spelled their name F-L-I-N-T.

Yes sir.

There was a family feud and one Flint changed his name to F-L-Y-N-N and went to New Orleans, fought in the battle of New Orleans. Another one changed his name to F-L-I-N-T, I believe. Yeah but I don't know what I told you.

b6
b7C

b6
b7C

CG 180-28

[redacted]

FLYNT:

Went to the Virginia I believe.

b6
b7C

No there was one stayed in Virginia the other one went to Georgia and fought in the battle of Bunker Hill.

[redacted]

Well I wrote all this down in the form of a story, anyway, so...

FLYNT:

Oh I'm very quickly getting to [redacted] that moved to eastern Kentucky to the south county Kentucky. The one who I told you was an Atheist.

[redacted]

Yes sir.

FLYNT:

And an Anarchist.

[redacted]

Mmm hmm.

FLYNT:

Didn't want to fight anybody.

[redacted]

That's right.

FLYNT:

Uh he had a grandson his name was Earnest Raymond Flynt that was my grandfather.

[redacted]

Yes sir.

b6
b7C

FLYNT:

He spelled his name F-L-Y-N-T.

[redacted]

Mmm hmm.

FLYNT:

My father, aware of all of the inconsistencies on the family name chose to leave his name F-L-I-N-T, now you're aware that today that my father still spells his name F-L-I-N-T.

[redacted]

F-L-I-N-T, that's correct.

CG 180-28

FLYNT:

Uh [REDACTED]
[REDACTED]

b6
b7C

[REDACTED]
FLYNT:

Changed, yes. I remember yes.

Your honor for the reasons that I just set forth uh I respectfully request that this court uh release me without bail I will address this situation in California Court tomorrow. I will be there at 8:00 o'clock and now if you want me to stipulate that I was indeed the F-L-Y-N-T that that arrested in California, I will do so, and I do not want to waive any rights that may result in me getting a conviction in that particular case. And uh I have and I (unintelligible) if you were asking your gonna instruct the marshal's to travel with me, I respectfully request that we make a four hour stopover in Kentucky because I have promised to speak at a church down there. I intend to speak this afternoon at 4:00 o'clock. And for your honor not to allow me to do this would be in conflict with my first amendment rights under the constitution and the ten commandments, uh primarily the 5th commandment. And I don't think that your honor wants to want this court in anyway to uh, to uh be involved in a separations issue and I won't quote the constitution specifically I think Thomas Jefferson said it best when responding to the First

Baptist Church of Danberry, Connecticut in 1802. After he took office they asked, wrote to Thomas Jefferson and says what does the First Amendment mean? As it applies to religion. President Jefferson answered saying it is meant to erect a wall separating the church and state. I do not think that your honor wants to be responsible for chipping at this wall any farther than the Supreme Court has already done. I respectfully request that I be released on my own recognizance to appear in California tomorrow. Thank you for your consideration.

MAGISTRATE [REDACTED]

Okay are there any questions of [REDACTED] that anyone has? If not we'll...

b6
b7c

[REDACTED]
ASSISTANT UNITED STATES
ATTORNEY

[REDACTED]
Yes ma'am.

How long have you known this man right here?

Uh a year and a half.

Uh who is he?

Who is he?

Yes.

His name is Mr. Flynt.

First name is Larry?

Well I'm not sure anymore (laughs).

Okay. Is this the same Mr. Flynt that has been charged in

Los Angeles for the case involving the wearing of an American flag.

Maam I was discharged with a Mr. Flynt in a wheelchair on a, on another airplane and I thought I had Mr. Flynt with me. However, when I arrived in uh Lexington it turns out that it was not Mr. Flynt. The Mr. Flynt I know so I'm very confused about the whole issue so I I can not verify anymore at this point.

b6
b7C

But you knew that he was Mr. Flynt:

Your honor I object to this.

Yes, okay if there are no further questions I'll excuse you uh

Thank you your honor.

b6
b7C

Thank you.

You know...

Huh?

...I'm sorry your honor but I believe that Mr. Flynt indicated to you that he was willing umm to stipulate that he was the Mr. Flynt who was to appear in Los Angeles.

He has done that your honor.

Yes I am aware of that during the course of Mr. Flynt's statement to me uh that he has indicated that indeed you are the person who has been arrested and charged with a violation of Federal Law in

California Mr. Flynt. Indeed you brought out through [redacted] that a different spelling uh but uh as we know that is a matter which of course, is more properly raised and you are not by virtue of the testimony that has here been given foreclosed from raising that issue as being that person who did the things that are charged in that indictment as having been done from uh presenting whatever defense you have. But Mr. Flynt your request to me to condition your agreement and your admission that you are the Larry Flynt that was charged in Los Angeles, California upon a release on your own recognizance bond and a condition to permit you to proceed as you initially determined to proceed to uh meet an assignment which uh you represented to me on Sunday you will have to keep are conditions which I cannot accept. While the matter of the uh uh First Amendment right to Freedom of Religion and Courts of Law I certainly have no expertise in that subject. It is a matter uh which you are free as I mentioned to you on Sunday to raise as a condition of bond and with respect to when you return to California Mr. Flynt. You will be forthwith taken to Los Angeles, California in the Marshal's custody. And I cannot impose a condition other than the one uh which has been directed by the filing of that indictment in

b6
b7c

California and the warrant that has been issued for your arrest. No other condition.

FLYNT:

May I address this issue in court now?

MAGISTRATE

Uh I might indicate Mr. Flynt, that you have every right to speak. I think I've made clear to you however that the imposition of conditions other than the one of returning to Los Angeles, California in the custody of the U.S. Marshal will not be granted.

b6
b7C

FLYNT:

I understand and I accept your condition you know and I'm asking that I be allowed to respond.

MAGISTRATE

Very well you may respond Mr. Flynt.

FLYNT:

I would like to ask you to reconsider for the simple reason that uh I know your honor, I'm not asking you, don't treat me as I should be treated. Treat me as you should treat, I mean uh ignorance is not bliss. I mean ignorance is just ignorance. And there's really no excuse for violating the law. The same constitution that protects me also protects you. So it's your, it's your responsibility to uphold that constitution for everyone. Not just me or not just the Seventh Circuit or the Supreme Court or the people in Congress or these people in this courtroom. I mean and to not allow me to do this is tantamount to treason.

CG 180-28

MAGISTRATE

FLYNT:

Can I interrupt you Mr. Flynt?

And and it puts you in violation of the law and I say this with all due respect your honor.

MAGISTRATE

Well Mr. Flynt you have the constitutional right to answer to the charges that are pending in California and to answer to them with speed and dispatch that the constitution accords to you in order to present your defense there. And that is a constitutional right that I am according to you.

FLYNT:

Your honor free expression is absolute.

MAGISTRATE

Yes.

FLYNT:

Justice Holmes says you can't scream fire in a crowded theatre. I say you can scream theatre even in a crowded fire. If a crime results from that that is the crime. But the flag, look freedom is not just limited.

MAGISTRATE

Mr. Flynt.

FLYNT:

To the Chicago Tribune you know.

MAGISTRATE

Mr. Flynt may I interrupt? I recognize that you have a particular philosophy that you are seeking indeed to make known to me. Uh, however uh I serve in the function of a judicial officer uh who is also bound by the constitution to accord you every constitutional right to which

b6
b7C

b6
b7C

You are entitled if you have been charged. And I am granting you your constitutional right for a rapid, speedy hearing, by returning to Los Angeles so you may answer to those charges. The matter of First Amendment right, your Freedom to Religion is certainly not going to be aborted. That exists at all times and I'm confident that you will be able to satisfy that right when the time comes that you can so do it.

FLYNT:

Then your honor I move for a stay until I can petition the Seventh Circuit or the United States Supreme Court.

MAGISTRATE

Mr. Flynt this is a preliminary hearing, a preliminary hearing is not a constitutional right. I have accorded your desire to have that hearing uh held on the only issue that was to be determined. Is whether you are Mr. Flynt.

b6
b7C

FLYNT:

Yeah but you're a Federal Magistrate aren't you your honor?

MAGISTRATE

Yes.

FLYNT:

You could release me on my own recognizance if you wanted.

MAGISTRATE

I have made the judgment and the circumstances and the representations that were made to me on Sunday uh to set the bond as I set have set it and I think Mr. Flynt you have pursued to the preliminary

hearing and your own statement that you are the Larry Flynt who was charged in Los Angeles.

FLYNT:

Well your honor when I first came in your courtroom I spit on the same American flag so I demand that this court uh hold me here without bail.

MAGISTRATE

Uh Mr. Flynt you have had your hearing. I've determined from the hearing that you are the Larry Flynt and uh there will be an order that will remove you to Los Angeles, California with dispatch so that you may face those charges.

b6
b7C

FLYNT:

Your honor with all due respect I'm only trying -- let me finish please, I'm only trying to accomplish one thing and that's to dismantle the constitution that you're defending and the only way I can do that is to get back before the United States Supreme Court and say to them the same thing that I said before, because when I'm in a position of power to do it I'm not gonna put people like Sandra Day O'Connor and you in jail. I'm gonna build a glass cage over the Smithsonian Institute and sell tickets.

MAGISTRATE

Well Mr. Flynt...

b6
b7C

FLYNT:

They can come and see what you look like because you are representative of this tradition. See we come from a government not from constitution but by tradition and your continuing to

CG 180-28

MAGISTRATE

perpetuate that tradition by denying me my First Amendment rights.

If I may interrupt Mr. Flynt I have accorded you a great deal of leeway in allowing you to freely speak as you have spoken and uh uh if it's not germane to the hearing which I've had and where I've found that you are that individual who has been charged in Los Angeles, California and I unfortunately have other matters which are taking my time Mr. Flynt and I'm entering the order to remove you to Los Angeles.

b6
b7C

FLYNT:

Your honor I have no other alternative but to ask the FBI at some point to place you under arrest.

MAGISTRATE

Come on Mr. Flynt.

b6
b7C

GRAHAM:

Can I get security request may I please. Making a security request please. Mr. Flynt has the Chief of Security coming in (inaudible).

(Inaudible Conversation)

(Monitoring Discontinued)

MEMORANDUM

December 22, 1983

TO: SAC, WFO

FROM: SA [REDACTED] (SQD C-7)

SUBJECT: LARRY FLYNT;
[REDACTED]

INFORMATION CONCERNING

Reference: Memo dtd 12/21/83 to SAC from SSA [REDACTED]
[REDACTED] (SQD C-4).

On December 21, 1983, writer discussed the contents of referenced memo with Assistant United States Attorney (AUSA) [REDACTED] United States Attorney's Office (USAO), Washington, D. C.

AUSA [REDACTED] concurred with writer that the matter did warrant some follow-up in view of the current interest in Larry Flynt by the USAO, Washington, D.C., and by WFO in view of the current pending DOJ investigation (WF 72-274). Furthermore, it was his feeling that in view of the past extortion matter at WFO concerning allegations involving high government officials (WF 9-5068), the followup in captioned matter was indeed logical.

In view of the foregoing, writer intends to request a copy of an investigative report detailing actions taken by the Inspection Division of the United States Secret Service (USSS) with regard to information contained in referenced memo.

2 - WFO
JFC:jc
(2)

ASAC-C [Signature]

72-274-28

SEARCHED	INDEXED
SERIALIZED <i>mp</i>	FILED <i>mp</i>
DEC 22 1983	
FBI - WASH. FIELD OFFICE	

[Signature]

MEMORANDUM

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SUBJECT: LARRY FLYNT;
[REDACTED]

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In view of the foregoing, writer intends to request a copy of an investigative report detailing actions taken by the Inspection Division of the United States Secret Service (USSS) with regard to information contained in referenced memo.

2 - WFO (1-72-274)
JFC:jc
(2)

72-274-29

SEARCHED	INDEXED
SERIALIZED	FILED
DEC 22 1983	
FBI - WASH. FIELD OFFICE	

XX AIRTEL

12/30/83

TO: SAC, LOS ANGELES

FROM: SAC, WFO (72-274) (P) (SQD C-7)

LARRY FLYNT;
INTERFERENCE WITH SUPREME COURT
OF THE UNITED STATES;
OOJ
(OO:WFO)

Enclosed for Los Angeles is one copy of a handwritten note allegedly written in behalf of Larry Flynt on or about November 8, 1983.

Captioned matter concerns a verbal outburst of obscenities by Flynt on November 8, 1983, at the U.S. Supreme Court, Washington, D.C. The verbal outburst by Flynt was addressed to the court and he was subsequently taken into custody by the U.S. Supreme Court Police. He was later charged by the United States Attorney's Office (USAO), Washington, D.C., with violation of Title 18, USC Section 1507 (Interferring, Obstructing, or Impeding the Administration of Justice). Subsequently, the matter was referred to WFO with the concurrence of the Bureau.

During the investigation, it has been determined that the original of the enclosure was written and directed to the court appointed counsel for Flynt, who was arguing the case before the court at the time. From interviews, it is believed that the note was in fact given to a Supreme Court employee in the Clerk's Office by [redacted] for Flynt. The USAO has requested that the factual origination of the note be determined.

2-Los Angeles (Encl. 1)

①-WFO

JFC:act

(3)

72-274-30

mr

mr

WFO 72-274

LEAD

LOS ANGELES DIVISION

AT BEVERLY HILLS, CALIFORNIA. Locate and interview [redacted] 9465 Wilshire Boulevard, 8th Floor, telephone 218-278-1111, and using the enclosed copy to refresh his recollection, determine if in fact he wrote the note, if in fact he was acting on the direction of Flynt, and if he expected the court to grant the request.

It should be noted that WFO has telephonically contacted Isaacman and has determined that he is willing to cooperate fully in this matter.

b6
b7c



THE MADISON
Washington, D.C. 20005
(202) 862-1600

Larry Flynt requests
that you make the following
statement on his behalf
to the court:

"My client feels that
he is being denied counsel
of his choice, namely,
himself. Mr. Flynt is in
the gallery and is prepared
to address the court, if
permitted."

The MONTPELIER—Restaurant and Lounge
La PROVENCE—Coffee House
The RETREAT—English Pub

AIRTEL

1/5/84

TO: DIRECTOR, FBI (72-2976)
(ATTN: PUBLIC CORRUPTION UNIT, WCC SECTION, CID)
(ATTN: [REDACTED] FBI LABORATORY)

FROM: SAC, WASHINGTON FIELD OFFICE (72-274) (P) (SQD C-7)

b6
b7C

LARRY FLYNT;
INTERFERENCE WITH SUPREME COURT
OF THE UNITED STATES;
OOJ
CO:WFO

Re WFOtelcall to [REDACTED] Radio Engineering
Section, FBI Laboratory, January 4, 1984.

b6
b7C

Captioned matter concerns a verbal outburst of obscenities by Flynt on November 8, 1983, at the United States Supreme Court, Washington, D.C. The verbal outburst by Flynt was addressed to the Court and he was subsequently taken into custody by the U. S. Supreme Court Police. He was later charged by the United States Attorney's Office (USAO), Washington, D.C., with violation of Title 18, USC Section 1507 (Interfering, Obstructing, or Impeding the Administration of Justice). Subsequently, the matter was referred to WFO with the concurrence of the Bureau.

The verbal outburst by Flynt was recorded by the U. S. Supreme Court recording system. The original tape is in the custody of [REDACTED], Marshal of the Court. The verbal outburst by Flynt is contained only on a few feet of the magnetic tape. The Supreme Court provided WFO a cassette recording taken from the master tape (10½" reel to reel containing 3,600 feet of tape) of the outburst.

b6
b7C

3-Bureau
(2) Washington Field

JFC:sgt
(5) *sgt*

72-274-31

mb

mb

RDR

WFO 72-274

The USAO has requested that the FBI develop enhancement from the original tape.

The Supreme Court has finally agreed to allow the FBI to bring required equipment into the Supreme Court in order to accomplish the requested enhancement. The Supreme Court will not allow the original tape to leave the premises of the Court.

REQUEST OF THE BUREAU

The Signal Analysis Unit, Radio Engineering Section, FBI Laboratory, is requested to perform the enhancement of that section of magnetic audio tape containing the verbal outburst made by Flynt. This should be coordinated with WFO Case Agent, SA [redacted] X-[redacted] as soon as practical.

b6
b7C

72-274-32

SEARCHED	INDEXED
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JAN 18 1984	
FBI-WASH FIELD OFFICE	
	<i>gc</i>

b6
b7c

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

1/19/84

UNITED STATES OF AMERICA

v.

LARRY FLYNT

:
:
:
:
:

Criminal No. 83-0852 M

GOVERNMENT OPPOSITION TO DEFENDANT'S MOTION
TO DISMISS OR IN THE ALTERNATIVE FOR A
BILL OF PARTICULARS

The United States of America opposes the defendant's motion to Dismiss or in the Alternative for a Bill of Particulars and in support thereof represents the following:

On November 8, 1983, the dignity and decorum of the United States Supreme Court-pristine for nearly two centuries-was shattered by the deliberately outrageous conduct of the defendant. On that date, the defendant had been present in the courtroom of the Supreme Court during the oral argument in Keeton v. Hustler Magazine, Inc., et. al. (Docket No. 82-485)^{1/} Special preparation for the attendance of the defendant and his entourage had been made both because of his confinement to a wheelchair and other security-related considerations.

While the Court was in session, and as the Keeton argument concluded, the defendant suddenly began shouting the following lewd, obscene, profane and insulting epithets at the Justices:

^{1/} The defendant is the owner of Flynt Publications Inc., among whose publications is Hustler Magazine.

Attorney in Keeton:

----"in considerable measure has been part of the richness and greatness of this country. Thank you.

CHIEF JUSTICE:

Thank you gentlemen, the case is submitted. We'll hear arguments next in Calder against Jones and Ingalls.

LARRY FLYNT:

Fuck this Court - - you denied me counsel of my choice - - all because of one token cunt - - goddamn motherfuckers.

CHIEF JUSTICE:

Will you see that the Marshal - will you inform the Marshal to take that man into custody.

LARRY FLYNT:

(remarks made at same time Chief Justice makes previous remarks)
- - "goddamn motherfuckers"2/

Still shouting, the defendant was immediately wheeled from the courtroom by a United States Supreme Court police lieutenant at the command of the Chief Justice. Later that day, the defendant was charged in the instant information with the violation of 18 U.S.C. § 1507. He appeared before Magistrate Jean Dwyer of this Court where he displayed, albeit with a disclaimer,

2/ Since the Court was in session, its official tape recorder was engaged at the time of the defendant's vulgar and abusive harangue and captured the defendant's words. A recording of the actual event in cassette form is attached to this pleading as Exhibit A

an abusive vulgarism, i.e., "FUCK THIS COURT" obscenely etched upon the front of his shirt. November 8, 1983, transcript at 6-7, 12-13, 15, Exhibit B; see photograph Exhibit C

On November 23, 1983, the defendant appeared for arraignment on the instant information before Magistrate Dwyer and made elections both to have the magistrate conduct all proceedings in the case and to proceed pro se in the matter. By this date, the defense had also received full discovery in the case including both the transcript and the cassette which memorialized the defendant's expressive conduct in the Supreme Court on November 8, 1983. It is on such a record that the defendant now complains that the pending information against him is legally insufficient under Rule 7(c)(1) of the Federal Rules of Criminal Procedure or in the alternative that he is entitled to a written Bill of Particulars under Rule 7(f). Defendant thus posits his pleading on a premise rich in irony but destitute in apposite authority.

The policy underlying the application of Rule 7 is to guarantee that the charging instrument (1) contains the elements of the offense charged and (2) fairly informs the defendant of the charge against which he must defend so that he may plead an acquittal or conviction in bar of any future prosecution for the

same offense. Hamling v. United States, 418 U.S. 87, 117-119 (1974) The charging instrument is to be tested by practical rather than technical considerations, that is, whether it states the elements of the offense intended to be charged and adequately apprises the defendant of that which he must be prepared to meet. United States v. Contris, 592 F.2d 893, 896 (5th Cir. 1979)

The instant information does both. Indeed, it presents a paradigm of the "plain, concise, and definite written statement of the essential facts constituting the offense charge" required Rule 7(c)(1) of the Federal Rules of Criminal Procedure. ^{3/}

It contains each element of the offense; namely, an illegal demonstration within a building housing a court of the United States, conducted with the intent of interfering with, or obstructing or impeding the administration of justice.

^{3/} The Federal Rules of Criminal Procedure are to be construed to secure "simplicity in procedure, fairness in administration and the elimination of unjustifiable expense and delay. Rule 2. see United States v. Debrow, 346 U.S. 374, 376 (1953) [Rule 7(c)(1) designed to eliminate prolix indictments and to secure simplicity in procedure]

Of course, an information need not contain specific acts of illegality where, as here, a person of "normal intelligence would have fair notice of the conduct proscribed by the statute".

United States v. Conlon, 628 F.2d 150, 154 (D.C. Cir. 1980) The instant information is phrased substantially in the language of a statute which "fully, directly and unambiguously sets forth all of the elements of the offense" id. at 155; see United States v. Debrow, supra.; United States v. Ramos, 666 F.2d 469, 474, (2d Cir. 1982); United States v. Uni Oil Inc., 646 F2d 946 (5th Cir. 1981) 18 U.S.C. §1507 reads, in pertinent part:

Whoever, with the intent of interfering with,
obstructing, or impeding the administration of
justice . . . [resorts to any other demonstration]
. . . in or near a building housing a court
of the United States . . . shall be
fined not more than \$5,000 or confined for
more than one year or both.

The information also recites the statutory citation. Thus, the defendant is reduced to the fiction of alleging his ignorance of the charge against which he must defend, by claiming that he is "left in the dark as to what conduct is actually at issue and must be defended against at trial". (Defendant's mot. at 6) A

common sense view of the record in this case consistent with Rule 7 renders defendant's position unsupportable.

Thus, to paraphrase Debrow:

the charges in the instant information follow substantially the wording of the statute, which embodies all the elements of the crime, and such a charge clearly informs the defendant of that which he is accused, so as to enable him to plead the judgment in bar of any further prosecution for the same offense. It is inconceivable to us how the defendant could possibly be misled as to the offense with which he stand charged. The sufficiency of the information is not a question of whether it could have been more definite and certain.

346 U.S. at 377.

Finally, denied sufficient factual foundation and legal citation for his position, the defendant shifts from advocacy by amnesia to advocacy by alchemy. He creates a straw man and knocks him down. He argues that a 1507 violation must be "associated with parading or picketing". (Defendant mot. at 4 par. 8; at 5 par 8-10; at 6 par. 10-12; at 7 par. 13-14.) His

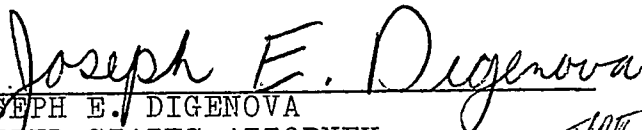
premise here too is fatally flawed. Congress passed 18 U.S.C. §1507 to insure the preservation of order and decorum at the Supreme Court because they are essential elements of due process of law. See, S. Rep. No. 719 81st Cong. 1st Sess. 2 (1949). "Words of a statute must be read as to effectuate the legislative purpose and this will often mean giving words a broad rather than a narrow reading." United States v. Conlon, supra, 628 F.2d at 156. Thus, the defendant's tortuous assay at constricting the clear language, i.e. "or resorts to any other demonstration" of §1507 to require a nexus to sound-trucks et. al. must fail in light of the clear intent of the Congress in its passage of such legislation.

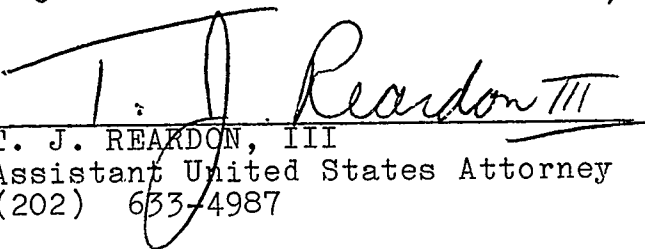
Defendant in the alternative next asks the court to order the government to produce a bill of particulars so he can discover more precisely what he allegedly did wrong in the Supreme Court on November 8, 1983. Our response is three-fold. First, the function of a bill of particulars is to inform the defendant of the nature of charges against him and to prevent or minimize the element of surprise at trial. Wong Tai v. United States, 273 U.S. 77 (1927), United States v. Matlock, 675 F.2d 981 (8th Cir. 1982). Since the information is sufficient on its face to apprise the defendant of the charges against him, a bill of particulars is unwarranted. Second, in the case, sub judice, the defendant by November 23, 1983, received full discovery including the transcript

and cassette which captured his crime. Therefore, a bill of particulars would be a mere redundancy. Third, inquiry into the government's legal or evidentiary theory as to the means by which a defendant committed a specific criminal act is not a proper purpose for a bill of particulars. See e.g., United States v. Leonelli, 428 F. Supp. 880 (SDNY 1977); United States v. Bozza, 234 F Supp.15 (EDNY 1964), United States v. Kahaner, 203 F. Supp. 78 (SDNY) aff'd 317 F.2d (2d cir.) cert. denied, 375 U.S. 836 (1963).

WHEREFORE, we respectfully request the Court to deny both the defendant's motion to dismiss the information and his alternative motion for a Bill of Particulars.^{4/}

Respectfully submitted


JOSEPH E. DIGENOVA
UNITED STATES ATTORNEY

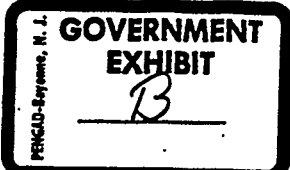

T. J. REARDON, III
Assistant United States Attorney
(202) 633-4987

^{4/} Defendant has also filed a motion captioned Brady Demand. We have no such evidence producible under Brady.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Opposition was mailed this 13th day of January, 1984, to Paul J. Cambria, Jr., Esquire, counsel for defendant Flynt, at Lipsitz, Green, Fahringer, Roll, Schuller & James, One Niagara Square, Buffalo, New York, 14202.

T. J. REARDON, III
Assistant United States Attorney
United States Courthouse
3rd & Constitution Avenue, N.W.
Washington, D.C. 20001
(202) 633-4897



IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,)
)
 PLAINTIFF,)
)
 - v-) U.S. MAGISTRATE'S
) NO. 83-0582
 LARRY FLYNT,)
)
 DEFENDANT.)
)
 * * * * *)

Tuesday, November 8, 1983
Washington, D. C.

The above-entitled matter came on for presentment
before the HONORABLE JEAN DWYER, United States Magistrate
Courtroom No. 10, commencing at approximately 3:30 p.m.

APPEARANCES:

TIMOTHY J. REARDON, Esq.
JOSEPH diGENOVA, Esq.
JOHN HUME, Esq.
On behalf of the Government

ALAN L. ISAACMAN, Esq.
DAVID KAHN, Esq.
On behalf of the Defendant

THIS TRANSCRIPT WAS PRODUCED BY C.A.T.
(COMPUTER AIDED TRANSCRIPTION)

MINDI L. COLCHICO
OFFICIAL COURT REPORTER
6808 U.S. COURTHOUSE
WASHINGTON, D. C. 20001

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1 You have a right not to discuss these charges with
2 anyone. If you do discuss the charges with anyone, except for
3 your own attorney, what you say to the person who is not your
4 lawyer can be used against you now or in the future.

5 You have the right to have a trial either before me
6 sitting as a United States Magistrate, or before a United
7 States District Court Judge, either with a jury or without a
8 jury.

9 In that connection, there are certain time limits
10 which I am sure your attorneys are familiar with, that I don't
11 think we really need to get into right now.

12 You have the right to have counsel, and obviously you
13 have exercised that right by retaining counsel who are present
14 here in court today.

15 Mr. Reardon, gentlemen, have I missed anything, as
16 far as the preliminaries go?

17 MR. REARDON: No, ma'am, I don't think you have.

18 MR. ISAACMAN: I don't think so.

19 MR. KAHN: I did not hear in terms of pro hac vice.

20 MR. ISAACMAN: We have praecipes filled out here and
21 we would ask the Court for permission to appear in Mr. Flynt's
22 behalf for this proceeding.

23 THE COURT: Counsel, you will, of course, under the
24 local rules, have to arrange for local counsel before you get
25 too much farther down the road, but certainly in light of the

1 rather abrupt nature of these proceedings, I will be happy to
2 have you proceed this afternoon at least on a pro hac vice
3 basis, unless there is some serious objection well-grounded by
4 the government.

5 Mr. Reardon?

6 MR. REARDON: There is no objection at all by the
7 government at this proceeding.

8 MR. ISAACMAN: Thank you, Your Honor.

9 May I approach the clerk?

10 THE COURT: Yes, give them to the clerk.

11 I will be glad to hear you on the issue of bond, Mr.
12 Reardon.

13 MR. REARDON: Perhaps, I should, Your Honor, if I
14 might, place on the record that I have had preliminary
15 discussions with defense counsel that may obviate the need for
16 a long discussion in this regard, but I would like to have them,
17 if I could, through the Court, go first so I may properly
18 answer, if I could.

19 THE COURT: Sure. Gentlemen? Just one, please.

20 MR. ISAACMAN: Thank you, Your Honor. Your Honor, is
21 it appropriate to approach the podium?

22 THE COURT: Either the podium or the table itself.
23 When I was in trial practice I used to hate the podium, but be
24 my guest.

25 MR. ISAACMAN: Thank you, Your Honor.

1 Your Honor, Mr. Flynt is a resident of California,
2 Los Angeles, California, specifically Bel Aire, California. He
3 has advised me of his intention to return here, willingly and
4 voluntarily, whenever the Court sets the next date.

5 He has, in my experience, and I have represented him
6 for five to six years now, never failed to appear when he said
7 he was going to appear in court.

8 THE COURT: With one possible exception. Wasn't he
9 required to appear in court last week?

10 MR. ISAACMAN: If I might, Your Honor, when he said
11 he was going to appear. He said from the beginning he wasn't
12 going to appear. As a matter of fact, the Court --

13 THE COURT: You did qualify that, counsel. I stand
14 corrected.

15 MR. ISAACMAN: The Court he was to appear in front of,
16 when he was brought in there, asked Mr. Flynt if he would agree
17 to appear the next time, which is on the 14th of this month.
18 Mr. Flynt said, "Yes." On Mr. Flynt's word, the Court released
19 him on his own recognizance.

20 I would urge the Court, Your Honor, to allow Mr.
21 Flynt to be released on personal recognizance in this matter.

22 Without going into the underlying nature of these
23 charges, I might just say that Mr. Flynt felt some frustration
24 in not being permitted to argue a case which he had pending
25 this morning in front of the Supreme Court. It was a case in

1 which the Court had granted cert. His counsel had resigned not
2 long before the case was heard. New counsel was discharged and
3 court-appointed counsel, not of Mr. Flynt's choosing, made the
4 oral argument.

5 Mr. Flynt requested to make the argument on his own
6 behalf. He is a party in that case. The Court denied the
7 request.

8 Mr. Flynt attended the proceedings, attempted to
9 convey to the Court again his willingness and preparation to
10 make the argument and the Court did not grant his request and
11 he felt frustrated, and whatever happened happened as a result
12 of that.

13 Mr. Flynt has indicated that he is prepared to write
14 a letter to the Court expressing his apology for the matter.

15 THE COURT: That, I think, we needn't go into just at
16 this point.

17 MR. ISAACMAN: Thank you. The point I am trying to
18 make is that Mr. Flynt is not attempting at all to resist these
19 proceedings and will return voluntarily. We would urge the
20 Court to allow him to be released on his personal recognizance.

21 THE COURT: Mr. Reardon.

22 MR. REARDON: Well, Your Honor, we would assume, in
23 light of Mr. Flynt's model behavior here this afternoon, that
24 his T-shirt refers to some other court, although I must say --

25 THE COURT: The Court sincerely hopes so.

1 MR. REARDON: -- it is a sign of the times perhaps
2 that courts need be so indulgent of such, I suppose, speech.

3 In regard to his bond, we have no objection to a
4 conditional release in this case. We would submit to the Court,
5 as we have discussed with counsel before this hearing occurred,
6 that perhaps it is best that Mr. Flynt stay away from the
7 Supreme Court for awhile, and we would like to have that be one
8 of the conditions of his release.

9 As I understand it, his counsel do not object to that.

10 THE COURT: It does not appear an unreasonable
11 objection. Indeed, it might be in his best interest as well as
12 everybody else.

13 MR. REARDON: We are also constrained to place on
14 this record, and do so without modulation of voice because it
15 is a report that is neither first or secondhand, and I have
16 told counsel ahead of time of my intention to do so because of
17 my constraints to do so, that Mr. Flynt in the past has
18 apparently issued words of threats to the lives of marshals who
19 perhaps were to serve him and bring him into custody on the
20 west coast.

21 As I understand it, those threats did not ripen into
22 anything else fortunately but these are the type of statements,
23 and today it was the type of conduct, as witnessed by many,
24 many people, that calls into serious question his respect for
25 the legal process and the authority of the Court, except when

1 he deems it in his best interest to abide by it.

2 It is for that reason that we use and support the
3 condition that he stay away from the Supreme Court and that he
4 may be very clear of his obligation to appear here and in any
5 other court to which he is now properly attached.

6 THE COURT: Gentlemen, do you wish to be heard
7 further?

8 MR. ISAACMAN: Your Honor, without getting into a
9 disagreement with Mr. Reardon over a matter which really is not
10 a major one as far as his release is concerned, I would urge,
11 at any rate, Mr. Reardon did indicate that Mr. Flynt's counsel
12 does not object to a condition that he not go back before the
13 Supreme Court, I take at least for the pendency of these
14 proceedings. We did not convey that to Mr. Reardon, although
15 Mr. Reardon did indicate that that was an intention of his to
16 request that that be a condition.

17 I understand, without having had a chance to really
18 discuss it with Mr. Flynt, that Mr. Flynt is not willing to
19 agree, as part of his release, not to go back in front of the
20 Supreme Court now. I understand that he has no intention to go
21 back in front of the Supreme Court now. It is the only case
22 that he had pending in front of the Supreme Court. I don't see
23 any reason why he would go back there.

24 THE COURT: Counsel, I get paid for cutting these
25 kind of knots. It does not appear to me to be an unreasonable

1 request and it will be a condition of his release. Mr. Flynt's
2 agreement is not necessary, although his promise to follow the
3 conditions, of course, is an essential ingredient of his
4 release on bond.

5 MR. ISAACMAN: Thank you, Your Honor.

6 THE COURT: Has there been any opportunity to discuss
7 with Mr. Flynt -- since he is not from this area, I am
8 reluctant to set a status call, which is normally what we do a
9 few days after someone is presented on a misdemeanor
10 information. But I hate to bring him all the way back from the
11 west coast for that purpose.

12 Has there been any discussion as to the forum in
13 which Mr. Flynt would prefer to be tried? As I indicated, the
14 Federal Rules are pretty clear on the point that it is his
15 option almost solely as to whether he wishes a District Court
16 judge or magistrate to try the case and as to whether it is to
17 be a jury or non-jury trial.

18 We will need to resolve that at some point, because
19 if it is going to be a trial before me eventually we are going
20 to have to set a trial date. If it will be a trial before a
21 District Court judge then the information must be filed in the
22 clerk's office and it will go on the wheel just as all other
23 cases filed in, let's say, the upper level of the District
24 Court.

25 MR. ISAACMAN: Your Honor, we have not discussed that

1 matter.

2 THE COURT: I am not trying to press you on it,
3 counsel. I am trying to get some notion of where you stand, if
4 at all, at this point.

5 MR. ISAACMAN: I am afraid we are not able to say.

6 THE COURT: I think your client would like to speak
7 to you.

8 MR. ISAACMAN: Thank you, Your Honor.

9 THE DEFENDANT: Your Honor --

10 THE COURT: Why don't you talk to your attorney for a
11 minute, Mr. Flynt.

12 MR. ISAACMAN: Your Honor, I think it is going to
13 warrant a little more discussion than we have had an
14 opportunity to have.

15 THE COURT: I have no problems with that at all,
16 counsel. We must set another date. We can't simply let the
17 case be dropped into the system and wander off somewhere,
18 because of the limitations of the Speedy Trial Act.

19 Mr. Reardon, can you give me any useful suggestions?

20 MR. REARDON: Your Honor, to just set a date, I take
21 it obviously Your Honor hasn't, which usually remains until the
22 last of your hearing, to actually arraign the defendant.

23 THE COURT: Until he elects which forum he is going
24 to be tried by, I think arraignment at this point might be
25 premature. If he elects to be tried before me, then, of course,

1 I will conduct an arraignment and set up a schedule for motions,
2 if any, and trial and so on.

3 If he elects to be tried before a District Court
4 judge, then it may well be that that judge would prefer to
5 conduct the arraignment. So I think it is better not to do it
6 this afternoon.

7 MR. REARDON: Very well, Your Honor.

8 THE COURT: I will certainly hear you, if there is
9 any compelling reason to do it.

10 MR. REARDON: No, it is just that this being his
11 presentment he has been notified of the charges against him, of
12 course, and that is the compelling reason for this procedure.

13 We suggest to the Court that perhaps there should be the
14 setting of a controlled date for this matter and by that date,
15 there should be some communication to the Court of the desire
16 of the defendant on how he wishes to proceed.

17 THE COURT: It might be, gentlemen, that the best way
18 to handle it, since local counsel must come into the case at
19 some point, is to set a status call before me towards the
20 latter part of this month, at which local counsel can convey to
21 me Mr. Flynt's desires. If he is going to elect trial before
22 me, the proper forms would be provided and will be executed.
23 If he elects a trial before the District Court, I will simply
24 certify it on to the District Court. That might save Mr. Flynt
25 a trip back from the west coast, which frankly is one of my

1 concerns.

2 MR. ISAACMAN: We appreciate that, and I think if the
3 Court would set it for the 21st of November, that would be
4 agreeable with our calendar.

5 THE COURT: That is fine.

6 Is that satisfactory with you, Mr. Reardon?

7 MR. REARDON: That is fine, Your Honor. I would say,
8 if I might add, for the record, that we would like to have, as
9 evidence, and of course have a right to place this on the
10 record, that T-shirt of Mr. Flynt's, and we would intend to
11 take it from him before he leaves the Court, and I think that
12 the civilized way to proceed is to make that once again a
13 condition of his release. I am sure his counsel would be able
14 to provide him with other clothing.

15 MR. ISAACMAN: Your Honor, I don't think we have
16 other clothing for Mr. Flynt to wear at this point.

17 MR. REARDON: We will find --

18 MR. ISAACMAN: I don't see how Mr. Flynt's clothing
19 can warrant the charge here as evidence of this charge. I
20 assume that he was talking about act of conduct rather than
21 some piece of clothing that he is wearing.

22 MR. REARDON: Your Honor, of course --

23 THE COURT: If that presents a problem, gentlemen, I
24 would assume somebody somewhere in our law enforcement system
25 has a camera.

1 MR. REARDON: Thank you, Judge.

2 THE COURT: That might perhaps be the simpler way to
3 handle it.

4 Very well, Mr. Flynt will be released on his own
5 recoqnizance but will not be required, unless he elects to do
6 so, to return here for the status call on the 21st of this
7 month. If he elects to do so, of course, he is entirely free.
8 If not, then he will simply be required to return to court at
9 whatever date the Court advises him he is due back here.

10 There will be a requirement for a weekly call to
11 pretrial services. Do we have those forms?

12 By the 21st, gentlemen, I would like some commitment
13 one way or the other. It doesn't matter which way it goes. I
14 need to know so we can keep the case moving.

15 MR. ISAACMAN: Could we have a time on that, Your
16 Honor?

17 THE COURT: 9:30. Gentlemen, you also will be given
18 a copy of the release conditions, which will contain all of the
19 relevant information.

20 MR. ISAACMAN: Thank you, Your Honor.

21 THE COURT: Counsel for both sides, as well as Mr.
22 Flynt personally, will be given copies of the release
23 conditions in just a moment, and I will discuss them briefly
24 with Mr. Flynt.

25 THE CLERK: Mr. Flynt, you are going to be released

1 on your own personal recognizance. Your very next court date
2 is scheduled for November 21st in this courthouse, Courtroom 26.
3 In addition to that, you are required to report weekly to the
4 Pretrial Services Agency, and you will get the number here, and
5 you are to stay away from the Supreme Court.

6 Do you have any questions about any of that?

7 THE DEFENDANT: I don't have any questions. I have a
8 statement I would like to make, if the Court will permit me.

9 THE COURT: I think, again, you better consult with
10 counsel first, Mr. Flynt. It is not that I am not willing to
11 hear any litigant who appears before me. On the other hand, it
12 may well be that your attorneys at this point would feel that a
13 statement would be either inadvisable or premature. I strongly
14 suggest that you have a word with them first, if you would,
15 please, privately, privately.

16 Mr. Flynt, you need to sign the conditions of release
17 or unfortunately I will not be able to sign it myself and then
18 we will have some problems.

19 Gentlemen, it would be very helpful if you would
20 arrange to have whoever is going to be your local counsel
21 contact my chambers either next Thursday or Friday, just so we
22 will know who is going to be representing Mr. Flynt, and then
23 we will get a praecipe from him when he actually appears before
24 the Court, he or she actually appears before the Court.

25 MR. ISAACMAN: We will do that, Your Honor.

1 Mr. Flynt has told me what he wishes to say, to
2 address to the Court. He has told me he has a very short
3 statement and he would like permission to address the Court.

4 THE COURT: I certainly have no problems with it so
5 long as, in your view, it will not involve him in any more
6 trouble than he has already.

7 Mr. Flynt.

8 THE DEFENDANT: Your Honor, I would like to apologize
9 to you for wearing this T-shirt today. Had the Supreme Court
10 granted me the courtesy and been as nice to me as you have and
11 allowed me to speak as I am addressing you now, I would not
12 have done what I did in the Supreme Court.

13 I have been fighting the battle for the First
14 Amendment for ten years. Abbey Hoffman once said that you can
15 scream in a theater, in a crowd, "fire". Larry Flynt is trying
16 to say that same thing today. Nobody was listening to Abbey
17 then. I hope they will listen to me now.

18 If I have offended you, once again, I apologize. It
19 was not my intent to show contempt. I have done my damndest
20 not to. Thank you.

21 THE COURT: Except for the last statement, Mr. Flynt,
22 I thank you very much.

23 Mr. Flynt, you have been given a copy of your release
24 conditions. You are absolutely obliged to follow them, because
25 any failure to follow your release conditions could result in

1 an application by the prosecution for a change in these
2 conditions.

3 The most important condition of all is that you must
4 be back in court. Now, as I said, you don't have to be here on
5 the 21st, because that will be more of a technical proceeding
6 to decide exactly what you want to do and where we go from here.
7 You are welcome to be here, however. I do not mean that in any
8 fashion you would be precluded from attending. It is just that
9 I am not going to require you to come back unless you have some
10 particular reason for wanting to.

11 However, on the date when you are advised that you
12 must be in court, that becomes an absolute obligation and any
13 deliberate failure to attend court, when you have been notified
14 that you are due here, under the conditions of this release is
15 a separate offense brought under the Bail Reform Act of the
16 laws of Congress, and a conviction for that could result in a
17 prison term of as much as a year, a fine of as much as \$1,000
18 or both, even were the information filed with me this afternoon
19 to be dismissed.

20 So please be sure that you are here when counsel
21 advise you that you are due here. You will also be notified by
22 other means as well. But keep in very close touch with counsel.

23 In that connection, you must advise both your
24 attorneys and pretrial services, whose number is on that piece
25 of paper, if you change your address or your telephone number.

1 Do you understand your release conditions, sir?

2 THE DEFENDANT: I understand.

3 THE COURT: Do you agree to abide by them?

4 THE DEFENDANT: No, I do not.

5 THE COURT: Mr. Flynt, if you don't agree to follow
6 the conditions of release, I can't release you. It is that
7 simple.

8 THE DEFENDANT: You have your decisions to make. Your
9 Honor, and I have mine to make. Free expression is absolute.
10 The First Amendment is the most important amendment of the
11 constitution. It cannot be compromised. You do not have a
12 right to compromise it. Neither does the Supreme Court have a
13 right to compromise it, and when I am the next president
14 anybody that is responsible for perverting the constitution of
15 this great land will be put in a glass cage and I will sell
16 tickets so people can come to Washington and see what evil
17 perverts really look like, who have been perverting the
18 constitution of this great land and denying us individual
19 liberties and civil rights for over 200 years.

20 It is beyond me to understand how a country founded
21 on the printed word that over 200 years later someone can still
22 be questioning what book you might read, what movie you might
23 see, or what T-shirt you might wear.

24 THE COURT: Mr. Flynt, the only limitation on your
25 actions is that you are not to go to the Supreme Court building.

1 I have not and would not attempt to place any limitations
2 whatsoever on what you say. That is not contained in your
3 release conditions. The sole restriction is the prohibition
4 against returning to the Supreme Court building.

5 Now, if you are willing to promise me that you will
6 follow the conditions of release, you will be released
7 immediately. If not, I will have to do something else for a
8 bond.

9 Would you talk with your attorneys for a moment,
10 please.

11 MR. ISAACMAN: Your Honor, may I just request the
12 Court to make this one modification: Mr. Flynt wants the
13 ability to attend the Supreme Court if they decide to hear
14 another case of his. There is no case pending in front of the
15 Supreme Court, and I can't foresee that that would happen while
16 this case in this court is pending, but if he is a litigant and
17 they take a case of his, none of which are currently on cert or
18 even cert being requested, petition for cert being requested of
19 the Supreme Court, if they take a case of his he wants the
20 right to attend that proceeding.

21 Subject to that condition, that if they accept the
22 case and set an oral argument for a date during the pendency of
23 these proceedings, he wants to be able to attend, subject to
24 that condition, he will agree not to go to the Supreme Court
25 while this case is pending.

1 MR. REARDON: It is a hypothetical, of course, if
2 there is a case that is on the docket to be heard.

3 THE COURT: There is not apparently. There isn't
4 even a petition for certiorari.

5 MR. REARDON: I understand. That is why it is a
6 hypothetical, but let me address it, if I might, and say that
7 at the appropriat time he can move--

8 THE COURT: It seems to me the appropriate way --
9 exactly. I was going to say it seems to me the appropriate way
10 to deal with that is just to apply to me for modification of
11 bond. I cannot conceive of any conditions under which I would
12 tell a litigant that he could not appear for a court in which
13 his case was pending.

14 MR. ISAACMAN: Subject to that condition then, Your
15 Honor, that is what we will do. We will apply to the Court for
16 modification of the bond if the case is taken in front of the
17 Supreme Court.

18 THE COURT: I was just reappointed for eight years
19 not too long ago, so I hope to be around for a while. I think
20 this case will be long gone by then.

21 Mr. Flynt, would you be so kind as to raise your
22 right hand, please, sir.

23 MR. ISAACMAN: Could Mr. Flynt have an affirmation,
24 Your Honor?

25 THE COURT: Certainly.

1 DEPUTY CLERK: Will you affirm to follow the terms
2 and conditions set forth in your release report?

3 THE DEFENDANT: I do.

4 THE COURT: I will see counsel on the 21st. Whether
5 Mr. Flynt comes or not is entirely his election. Good
6 afternoon.

7 (Whereupon, at 3:55 p.m., the presentment in the
8 above-entitled case was recessed.)

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13 REPORTER'S CERTIFICATE

14 This record is certified by the undersigned to be the
15 official transcript in the above-entitled case.

16
17 *Mandi L. Collier*
18 OFFICIAL COURT REPORTER
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PC-A50-Exhibit, H-1
**GOVERNMENT
EXHIBIT**
C



PHOTOGRAPH BY
C. C. S. STAFF

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FM LOS ANGELES (OC-3) (P)

TO DIRECTOR PRIORITY

CHICAGO (135-23) (INFO) ROUTINE

NEW ORLEANS (INFO) ROUTINE

SPRINGFIELD (INFO) ROUTINE

WFO (72-274) (INFO) ROUTINE

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UNCLAS

ATTENTION: BUREAU SUPERVISOR [REDACTED] OCS/CID.

JOHN ZACHARY DE LOREAN; ET AL; NARCOTICS MATTER - OCDE

TASK FORCE CASE; OO: LOS ANGELES; LA FILE 2450-74.

LARRY FLYNT, AKA; DESECRATION OF THE FLAG; ILLEGAL WEARING
OF MILITARY DECORATION; OO: LOS ANGELES; LA FILE 133-113.

FOR INFORMATION OF FBIHQ, ENHANCED COPIES OF "NOVEL
TAPES" RECEIVED FROM TECHNICAL SERVICES DIVISION ON JANUARY
23, 1984. TAPES ARE CURRENTLY BEING TRANSCRIBED AND SHOULD BE
COMPLETED THE WEEK OF JANUARY 30, 1984. AUGAS LOS ANGELES

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PAGE TWO (LA 245C-74 AND 183-115) UNCLAS

WILL REVIEW TAPES AND TRANSCRIPTIONS AS THEY ARE COMPLETED AND MAKE A DETERMINATION OF WHAT USE, IF ANY, WILL BE MADE OF THEM.

ARGUMENTS ON DEFENSE MOTION FOR DISMISSAL FOR PRE-JUDICIAL PRETRIAL PUBLICITY SCHEDULED FOR JANUARY 23, 1984, WERE PUT OVER TO FEBRUARY 13, 1984, IN ORDER TO GIVE U.S. DISTRICT JUDGE ROBERT M. TAKASUGI AN OPPORTUNITY TO REVIEW VOLUMINOUS MATERIAL WHICH HAD APPEARED IN THE MEDIA AND WHICH WAS SUBPOENAED BY THE DEFENSE.

ON JANUARY 19, 1984, AUSA, LOS ANGELES, FILED MOTION FOR PRETRIAL DETERMINATION OF AUTHENTICITY OF THE "THREAT TAPE." THE MOTION REQUESTS THAT THE ISSUE OF AUTHENTICATION BE RESOLVED PRIOR TO TRIAL AND COULD BE ACCOMPLISHED WITHOUT THE NECESSITY OF AN EVIDENTIARY HEARING BY THE FILING OF AFFIDAVITS BY [REDACTED] AND JOHN DE LOREAN SETTING FORTH (1) WHETHER THE ALLEGED "THREAT" CALL IN FACT OCCURRED; (2) ALL DETAIL KNOWN CONCERNING THE DATE, TIME, AND ALL OTHER INFORMATION CONCERNING THE ALLEGED "THREAT" CALL, INCLUDING THE WORDS USED; (3) WHETHER THE "THREAT TAPE"

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PAGE THREE. (LA 245C-74 AND 182-113) UNCLAS

IS IN FACT AN ACCURATE RECORDING OF THE "THREAT" CALL;

(4) WHATEVER DETAIL IS KNOWN CONCERNING THE "THREAT TAPE," INCLUDING INFORMATION ABOUT HOW, WHEN, WHERE AND BY WHOM IT WAS MADE OR RECORDED; AND (5) WHATEVER IS KNOWN ABOUT HOW THE TAPE CAME TO PUBLIC ATTENTION.

MOTION FURTHER ASKS THAT IF THE NON-AUTHENTICITY CANNOT BE DETERMINED BY THESE AFFIDAVITS, AN EVIDENTIARY HEARING SHOULD BE HELD PRIOR TO TRIAL IF DEFENDANT INTENDS TO OFFER TAPE AT TRIAL. ON JANUARY 23, 1984, U.S. DISTRICT JUDGE TAKASUGI ORDERED DEFENSE TO RESPOND TO THIS MOTION BY JANUARY 30, 1984, AND SET FEBRUARY 3, 1984, TO HEAR ARGUMENTS. WHETHER AFFIDAVITS WILL BE ORDERED OR AN EVIDENTIARY HEARING HELD WILL BE DECIDED ON OR AFTER FEBRUARY 3, 1984.

REGARDING LARRY FLYNT:

FOR THE INFORMATION OF FBIHQ, COMPETENCY EXAMINATION FOR FLYNT AS ORDERED BY U.S. DISTRICT JUDGE CONSUELLO MARSHAL HAS BEEN COMPLETED AT MEDICAL FACILITY AT

PAGE FOUR (LA 245C-74 AND 134-113) UNCLAS

SPRINGFIELD. ON JANUARY 26, 1984, FLYNT TO BE TRANSPORTED TO LOS ANGELES, ARRIVING ON JANUARY 27, 1984. SE DAY CONTEMPT OF COURT SENTENCE BY CHIEF U.S. DISTRICT JUDGE FRANK MC GARR, CHICAGO, EXPIRES JANUARY 27, 1984; HOWEVER, FLYNT TO REMAIN IN CUSTODY ON NO BAIL ON 182 MATTER.

ON JANUARY 30, 1984, FLYNT TO APPEAR BEFORE U.S. DISTRICT JUDGE MARSHAL ON THE 182 MATTER. RESULTS OF COMPETENCY EXAMINATION WILL BE MADE KNOWN AT THAT TIME, AND A MOTION ON THE MATTER OF BAIL WILL BE HEARD. IF FOUND COMPETENT, PLEA WILL BE ENTERED AND TRIAL DATE SET.

ALSO ON JANUARY 32, 1984, FLYNT IS TO APPEAR BEFORE CHIEF U.S. DISTRICT JUDGE MARSHAL REAL, LOS ANGELES, ON AN ORDER TO SHOW CAUSE IN REGARDS TO CONTEMPT, WHICH STEMS FROM FLYNT'S OUTBURST OF OBSCENITIES WHILE BEING ARRAIGNED DECEMBER 12, 1983, BEFORE U.S. MAGISTRATE JAMES J. MC NAHEM, LOS ANGELES, ON THE 182 MATTER.

BUREAU WILL BE KEPT ADVISED.

BT

TRANSMIT VIA: AIRTEL
 CLASSIFICATION: Unclas

DATE: 2/13/84FROM: Director, FBITO: SAC, Washington Field Office (72-274)

LARRY FLYNT; INTERFERENCE WITH
 SUPREME COURT OF THE UNITED STATES;
 OBSTRUCTION OF JUSTICE;
 OO: WFO

Washington Field Office is directed to forward within 30 days an airtel with an LHM (original and three copies), suitable for dissemination, updating the captioned investigation and including a prosecutive opinion.

In the event this investigation is in a closed status, submit closing communication to include LHM in compliance with the Manual of Investigative Operations and Guidelines, Section 194-5(6), p. 922.04.

b6
 b7C

2/14/84 [redacted] FBIHQ
 Admin. SSA [redacted]
 of Schedules status hearing
 @ WOC 2/17/84. gl C/HM to follow
 hearing

4/12/84 Admin. SSA [redacted]
 FBIHQ, of hearing
 scheduled for 4/12 - LHM
 to follow. gl.

2/17/84 Admin. SSA [redacted] total hearing
 had been rescheduled. gl
 3/20 Admin. SSA [redacted] total
 hearing scheduled for 4/12/84.
 LHM to [redacted]

72-274-34

SEARCHED	INDEXED
SERIALIZED	FILED
FEB 14 1984	
OFFICE	

AIRTEL

Unclass

2/13/84

Director, FBI

SAC, Washington Field Office (72-274)

LARRY FLYNT; INTERFERENCE WITH
SUPREME COURT OF THE UNITED STATES;
OBSTRUCTION OF JUSTICE;
OO: WFO

Washington Field Office is directed to forward within 30 days an airtel with an LHM (original and three copies), suitable for dissemination, updating the captioned investigation and including a prosecutive opinion.

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72-274-24

SEARCHED	INDEXED
SERIALIZED	FILED
FEB 14 1984	
FBI - WASH. FIELD OFFICE	

Memorandum



To : SAC, WFO (72-274) (P)

Date 2/14/84

From

SA [redacted] (c-7)

Subject :

LARRY FLYNT;
OOJ;
(OO:WFO)

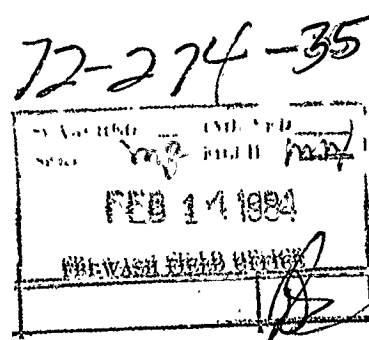
b6
b7C

The attached material was provided by [redacted]
Counsel to the President, to SA [redacted] White House
Liaison, who in turn provided it to SA [redacted] It is
understood that [redacted] gave the material to [redacted] on 1/31/84
at the White House.

b6
b7C

SA [redacted] provided the material to writer on 2/9/84.

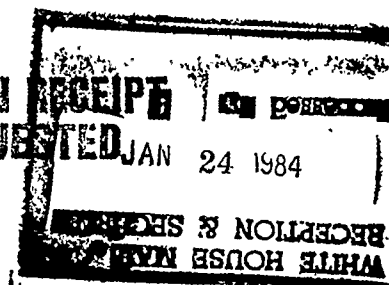
1-WFO
JFC:jc
(1)



RETURN RECEIPT
REQUESTED



RETURN RECEIPT
REQUESTED



Larry Flynt Publications

2029 Century Park East

Suite 3800

Los Angeles, CA 90067

(213) 556-9200


Attorney to President Reagan
The White House
1600 Pennsylvania Avenue
Washington, D.C. 20501

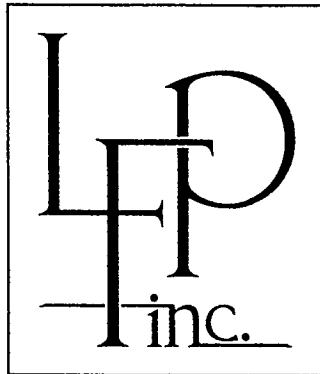
b6
b7c

CERTIFIED

P 291 476 531

MAIL

Processed by:



LARRY FLYNT PUBLICATIONS

January 25, 1984

[redacted]
Attorney to President Reagan
The White House
1600 Pennsylvania Avenue
Washington, D.C. 20501

b6
b7C

Dear [redacted]

I think we should talk.

Sincerely,

Larry C. Flynt/lc
LARRY C. FLYNT

LF/kc
dictated but not read

enclosure

71658 51364
SPECIAL ISSUE

1984 \$2.95

The Rebel

THE NEWSWEEKLY WITH A CAUSE

THE MURDER OF
VICKI MORGAN

INSIDE THE
AMERICAN
NAZI PARTY

WALL STREET
DRUG TRADE

VIDEO
PIRACY

LOBBYING FOR
NUCLEAR WAR



The Rebel

The newsweekly with a cause



Inside the American Nazi Party 24

By Peter Lake

A Nazi defector helps a REBEL journalist infiltrate the radical right.



Who Killed Vicki Morgan? Part II 32

By William Turner

In February, Marvin Pancoast will stand trial for a murder he did not commit. He had no motive. There is little physical evidence against him. Everything points to another killer. Who?

Film

Sudden Impact • Scarface • Uncommon Valor

6

clear war • Genetic Godzilla • Under-reporting unemployment • 007 claims—U.S. will ask for compensation for victims

Media

All Things Considered?
By John Motovalli

10

The Secret of Flight 007 44

By Don Freed

The KAL flight over Soviet airspace was planned.

Books

Going All the Way • Femininity

12

Philippine Thugs in the U.S. 49

By Gary Goodrich

With Reagan Administration collaboration, President Ferdinand Marcos has dispatched agents to harass and murder exiled Philippine liberation leaders.

Theater

A Private View

16

Rebel Round-Up 18

Late news from the political/criminal world-at-large.

Rebel News 20

ACLU to fight White House political visa curbs • Government stockpiles heroin for nu-

Killer Toys: an Interview with Edward Swartz 52

A Boston attorney is fighting the manufacturers of dangerous toys.

C-7

**FBI
TECHNICAL SERVICES DIVISION
FEDERAL BUREAU OF INVESTIGATION
WASHINGTON, D. C. 20535**

To: SAC, Washington Field (72-274) (SQD C-7) February 22, 1984

✓ From: Director, FBI

FBI FILE NO. 72-2976

LAB. NO. 40116006 E VT

Re: LARRY FLYNT;
INTERFERENCE WITH SUPREME COURT
OF THE UNITED STATES;
OOJ
OO: WFO

Examination requested by: SAC, Washington Field

Reference: Airtel dated January 5, 1984

Examination requested: Enhancement

Remarks: The enhancement examination was conducted by SA



b6
b7C

Enclosures 2 ^{file} (2 Technical Services Division Reports)

72-274-36

SEARCHED.....	INDEXED.....
SERIALIZED.....	FILED.....
FEB 23 1984	
OFFICE 	



b6
b7C

ADMINISTRATIVE PAGE

Do Not Include Administrative Page Information In Investigative Report

**FBI
TECHNICAL SERVICES DIVISION
FEDERAL BUREAU OF INVESTIGATION
WASHINGTON, D. C. 20535**

To: SAC, Washington Field (72-274) (SQD C-7) February 22, 1984

From: Director, FBI

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b6
b7C

Enclosures 2 (2 Technical Services Division Reports)

ADMINISTRATIVE PAGE

Do Not Include Administrative Page Information In Investigative Report

72-274-36

SEARCHED.....	INDEXED.....
SERIALIZED.....	FILED.....
FEB 23 1984	
FBI - WASH. FIELD OFFICE	

**REPORT
of the
FBI
TECHNICAL SERVICES DIVISION
FEDERAL BUREAU OF INVESTIGATION
WASHINGTON, D. C. 20535**

To: SAC, Washington Field (72-274) (SQD C-7)

February 22, 1984

FBI FILE NO. 72-2976

LAB. NO. 40116006 E VT

Re: LARRY FLYNT;
INTERFERENCE WITH SUPREME COURT
OF THE UNITED STATES;
OOJ

Specimens received January 18, 1984

Q1 One Ampex 30 magnetic tape cassette marked in part
"SA [REDACTED]"

b6
b7C

Result of examination:

Two enhanced copies were made of Q1, with one copy on a Maxell C30 magnetic tape cassette using Dolby B noise reduction encoding, and the second copy on a 5-inch reel of magnetic tape at a recording speed of 3 3/4 inches per second in a full-track configuration.

In order to obtain maximum intelligibility, the enhanced reel copy should be played on a good tape player with a comparable track configuration and should be reviewed using high-quality headphones.

Q1 and the enhanced copies of Q1 were personally delivered to SA [REDACTED] on January 19, 1984.

b6
b7C

72-274-37

SEARCHED
SERIALIZED
INDEXED
FILED
FBI/DOJ

**REPORT
of the
FBI
TECHNICAL SERVICES DIVISION
FEDERAL BUREAU OF INVESTIGATION
WASHINGTON, D. C. 20535**

To: SAC, Washington Field (72-274) (SQD C-7)

February 22, 1984

FBI FILE NO. 72-2976

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Re: LARRY FLYNT;
INTERFERENCE WITH SUPREME COURT
OF THE UNITED STATES;
OOJ

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b6
b7C

72-274-35

SEARCHED.....	INDEXED.....
SERIALIZED.....	FILED.....
FEB 23 1984	
FIELD OFFICE	

[REDACTED] *198*

b6
b7C

(Mount Clipping in Space Below)

(Indicate page, name of newspaper, city and state.)

THE WASHINGTON POST

Date: 3/15/84
Edition:

Title: LARRY FLYNT

Character: OOJ
or
Classification:
Submitting Office: WFO

Indexing:

A12 . . . R Thursday, March 15, 1984 THE WASHINGTON POST

Jailed Publisher Threatens Reagan

ATLANTA, March 14 (UPI)—Larry Flynt, the paralyzed publisher of Hustler magazine, said in a jail-house interview today that he has issued a contract to kill President Reagan. In Washington, the Secret Service said it was investigating.

In a telephone interview with Cable News Network, Flynt also said he knew who was responsible for the Nov. 7 bombing of the Capitol, but denied any personal involvement.

"One thing I will confess to, I have confessed to putting a contract out on President Reagan's life. I want to kill him . . .," he said in the inter-

view from federal prison in Butner, N.C., where he is serving a 15-month sentence for contempt of court.

A spokesman for the Secret Service said "we will investigate it like any other threat."

CNN also said federal investigators believe that Flynt or members of his pornography empire may have masterminded the bombing of the Capitol.

Two security guards who once worked for Flynt have told federal authorities they believe that an aide to Flynt was behind the bombing, CNN reported.

72-274-39

SEARCHED	INDEXED
SERIALIZED	FILED
MAR 15 1984	
FBI — WASH. FIELD OFFICE	

b6
b7C

AIRTEL

3/22/84

TO: DIRECTOR, FBI
FROM: SAC, WASHINGTON FIELD OFFICE (89C-921)

LARRY FLYNT,
dba Flynt Publications, Inc.;
INFORMATION CONCERNING FLYNT'S
PLAN TO BLOW HIMSELF UP DURING
HIS APPEARANCE BEFORE THE
U.S. SUPREME COURT IN
NOVEMBER, 1983;
CCSCAKA (U.S. SUPREME COURT -
ALL MEMBERS);
OO:WFO.

On 3/21/84, a video tape was received via certified
mail at the Washington Field Office from [REDACTED]
The tape is of extremely poor quality. The tape depicts a male
and a female engaged in sexual acts but it is not possible to
see the faces of the participants. The tape is being maintained
in the files at WFO.

b6
b7c

- 2 - Bureau
- 2 - Los Angeles
(1-245C-74)
(1-180-113)
- ② - Washington Field Office
(1-72-274)

RJH:msw
(6) *msw*

72-274-40

CS

Memorandum



To : SAC, WFO (72-274)

Date 3/23/84

From : SA [redacted] (Sqd C-7)

Subject : LARRY FLYNT;
OOJ
(OO:WFO)

b6
b7C

On 3/21/84 writer obtained the attached copy of a letter from [redacted] addressed to [redacted]
[redacted]

b6
b7C

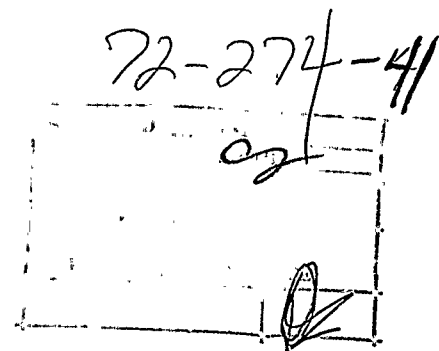
Writer also obtained a copy of an internal report prepared by the USSS relative to Henebry and his contact with Pascal and the apparent transfer of a video cassette tape allegedly prepared by associates to Flynt. The video cassette was supposedly given to [redacted] reportedly turned the cassette over to his superior, Captain [redacted] who thereafter reported that he lost the cassette sometime after viewing it.

b6
b7C

The attached report was obtained at the request of AUSA [redacted] and a copy of the report and letter were provided to AUSA [redacted] by writer on 3/22/84.

b6
b7C

①-WFO
JFC:jc
(1) *jc*



FBI

TRANSMIT VIA:

☒ Teletype
☐ Facsimile
☐ _____

PRECEDENCE:

☐ Immediate
☒ Priority
☐ Routine

CLASSIFICATION:

☐ TOP SECRET
☐ SECRET
☐ CONFIDENTIAL
☐ UNCLAS E F T O
☒ UNCLAS

Date 4/12/84

FM FBI WASHINGTON FIELD (72-274) (P) (SQUAD C-7)

TO DIRECTOR FBI (72-2976) PRIORITY

LOS ANGELES (180-113) (245C-74) (INFO) ROUTINE

CHICAGO (180-28) (INFO) ROUTINE

BT

U N C L A S

LARRY FLYNT; INTERFERENCE WITH SUPREME COURT OF THE UNITED
 STATES; OBSTRUCTION OF JUSTICE; OO:WFO

FOR THE INFORMATION OF THE BUREAU AND RECEIVING OFFICES
 ON 4/12/84, LARRY FLYNT, HAVING BEEN INCARCERATED AT FORT
 BUTNER, NORTH CAROLINA, APPEARED BEFORE UNITED STATES MAGISTRATE
 JEAN F. DWYER, WASHINGTON, D. C., FOR A HEARING REGARDING
 CAPTIONED MATTER.

AT THE OUTSET OF THE PROCEEDINGS, EXECUTIVE ASSISTANT
 UNITED STATES ATTORNEY [REDACTED] REQUESTED
 MAGISTRATE DWYER TO RULE ON THE COMPETENCY OF FLYNT. FLYNT,
 AS COUNSEL PRO SE, RESPONDED WITH A FIFTEEN OR TWENTY MINUTE
 PRESENTATION OF HIS BACKGROUND, CLAIMING IN THE END TO BE

①-WFO

JFC:mbf

(1) *mg*

72-274-42

Approved: *3/40*

Transmitted

(Number)

(Time)

Per *JMV*b6
b7c

FBI

TRANSMIT VIA:

☐ Teletype
☐ Facsimile
☐ _____

PRECEDENCE:

☐ Immediate
☐ Priority
☐ Routine

CLASSIFICATION:

☐ TOP SECRET
☐ SECRET
☐ CONFIDENTIAL
☐ UNCLAS E F T O
☐ UNCLAS

Date _____

PAGE TWO DE WF #0058

U N C L A S

COMPETENT AND THAT HE HAD BEEN EVALUATED AT FORT BUTNER AND FOUND TO BE COMPETENT.

DURING THE PROCEEDINGS, FLYNT WAS NOT HOSTILE, HOWEVER, HE DID USE PROFANITY AND WAS OTHERWISE OFFENSIVE BUT THIS WAS TOLERATED BY THE MAGISTRATE. HE ALSO CLAIMED TO HAVE EVIDENCE CONCERNING THE ASSASSINATION OF PRESIDENT KENNEDY AND THAT FORMER PRESIDENTS NIXON AND FORD CONSPIRED TO COVER UP THE TRUE FACTS OF THE ASSASSINATION. HE ALSO CLAIMED TO HAVE RELEVANT PHOTOGRAPHS OF THE ASSASSINATION ALONG WITH THE SECRET TESTIMONY OF JACKIE ONASSIS BEFORE THE WARREN COMMISSION. HE MADE A STATEMENT THAT HE WAS OFFERING THESE TO THE FBI AS WELL AS VICKIE MORGAN SEX TAPES INVOLVING PRESIDENT RONALD REGAN.

MAGISTRATE DWYER ADVISED THAT SHE WAS NOT SATISFIED WITH THE PSYCHIATRIC EVALUATION OF FLYNT AT SPRINGFIELD, ILLINOIS. BUT ACKNOWLEDGED SHE HAD NOT READ TWO PSYCHIATRIC REPORTS PREPARED AT FORT BUTNER. SHE THEREAFTER ORDERED FLYNT TO BE EVALUATED AT ST. ELIZABETH'S HOSPITAL, WASHINGTON, D.C., AND SET A DATE OF 5/30/84, FOR ANOTHER HEARING TO RULE ON THE COMPETENCY OF FLYNT.

Approved: _____ Transmitted _____ Per _____
(Number) (Time)

FBI

TRANSMIT VIA:

- ☐ Teletype
☐ Facsimile
☐ _____

PRECEDENCE:

- ☐ Immediate
☐ Priority
☐ Routine

CLASSIFICATION:

- ☐ TOP SECRET
☐ SECRET
☐ CONFIDENTIAL
☐ UNCLAS E F T O
☐ UNCLAS

Date _____

PAGE THREE DE WF #0058

U N C L A S

NO INVESTIGATION IS OUTSTANDING AT WASHINGTON FIELD
CONCERNING CAPTIONED MATTER.

WASHINGTON FIELD WILL FOLLOW AND REPORT PROSECUTION.

LHM TO FOLLOW.

BT

#0058

NNNN

Approved: _____ Transmitted _____ Per _____
(Number) (Time)

VZCZCWFO058

RR HQ LA CG

DE WF 0058 104 0333Z

ZNR UUUU

ZNR UUUUUU

R 12 0320Z APR 84

FM FBI WASHINGTON FIELD (72-274) (P) (SQUAD C-7)

TO DIRECTOR FBI (72-2976) PRIORITY

LOS ANGELES (180-113) (245C-74) (INFO) ROUTINE

CHICAGO (180-28) (INFO) ROUTINE

BT

U N C L A S

LARRY FLYNT; INTERFERENCE WITH SUPREME COURT OF THE UNITED STATES; OBSTRUCTION OF JUSTICE; OO:WFO

FOR THE INFORMATION OF THE BUREAU AND RECEIVING OFFICES ON 4/12/84, LARRY FLYNT, HAVING BEEN INCARCERATED AT FORT BUTNER, NORTH CAROLINA, APPEARED BEFORE UNITED STATES MAGISTRATE JEAN F. DWYER, WASHINGTON, D. C., FOR A HEARING REGARDING CAPTIONED MATTER.

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b6
b7c

72-27442

SEARCHED	INDEXED
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APR 1 1984	
FBI-WASH FIELD OFFICE	

PAGE TWO DE WF 0058

U N C L A S

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PAGE THREE DE WF 0058

U N C L A S

NO INVESTIGATION IS OUTSTANDING AT WASHINGTON FIELD
CONCERNING CAPTIONED MATTER.

WASHINGTON FIELD WILL FOLLOW AND REPORT PROSECUTION.

LHM TO FOLLOW.

BT

0058

NNNN

VZCZCWF0058

RR HQ LA CG

DE WF 0058 104 0333Z

ZNR UUUU

ZNR UUUUUU

R 12 0320Z APR 84

FM FBI WASHINGTON FIELD (72-274) (P) (SQUAD C-7)

TO DIRECTOR FBI (72-2976) PRIORITY

LOS ANGELES (180-113) (245C-74) (INFO) ROUTINE

CHICAGO (180-28) (INFO) ROUTINE

BT

U N C L A S

LARRY FLYNT; INTERFERENCE WITH SUPREME COURT OF THE UNITED STATES; OBSTRUCTION OF JUSTICE; OO:WFO

FOR THE INFORMATION OF THE BUREAU AND RECEIVING OFFICES ON 4/12/84, LARRY FLYNT, HAVING BEEN INCARCERATED AT FORT BUTNER, NORTH CAROLINA, APPEARED BEFORE UNITED STATES MAGISTRATE JEAN F. DWYER, WASHINGTON, D. C., FOR A HEARING REGARDING CAPTIONED MATTER.

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b7c

72-274-42

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Indexed	_____
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